Mike Pillow

To: octoink@juno.com
Subject: Sales tax on the sale of art work; our file number LR-02-061

Dear

I have copied your quesitions into this email and each is followed by our response. A link to the rules referenced has been sent to you.

1. Is COMMISSIONED artwork taxable? If so, do I separate out my cost of the materials from my charge for labor, or do I charge tax based on the total bill?

Response: If you are hired to create a work of art for custom order, your are performing a service and the amounts received by you for rendering this service are not subject to sales tax. Please refer to rule 710:65-19-10.

2. If I do artwork that will be used by a governmentally-run agency (such as the Zoo), do I charge sales tax? Do I pay sales tax for my materials if I'll use them in that work? What about if I sell artwork THROUGH a govenment agency (such as the Zoo gift shop)?

Response: If you sell an existing work of art to a unit of state or local government, you would not charge them sales tax. They should provide you with information concerning their exemption Please refer to rule 710:65-7-15. You are the taxable consumer user of the materials you use to create the works of art, without regard to whether they are created on commission. Please refer to the rule referenced in question number 1 above. If you have consigned your work to a gift shop, whether a governmental agency or a private company, the consignee should collect the sales tax from the consumer and remit it to the Oklahoma Tax Commission. You may wish to ask for a copy of their valid Oklahoma Sales Tax Permit to ensure they can purchase, exempt from sales tax, from you, the paintings that they are going to resale. The rule relating to sales for resale is 710:65-13-200.

3. If I do work for a company that is tax-exempt (such as a church), do I pay sales tax for my materials for that job?

Response: You would pay sales tax on the materials. Please refer to the rule referenced in the answer to question number 1 above.

4. If I paint a mural on the wall of someones home, is that tangible? If I buy the paints, are the paints consumed by me, or are they purchased ultimately by the customer (and thus I charge sales tax for that paint)?

Response: If you paint a mural on the wall of someones home, you are creating a work of art and the cost of the materials used are subject to sales tax when you purchase them. Since it is a comissioned work of art that you are creating, no sales tax is due on the gross receipts of the sale of the "service" of rendering the art work. Please refer to the rule referenced in the answer to question number one above.

5. If I buy supplies to paint a picture, then alter those supplies before resale, am I considered a consumer or a reseller? For example: I buy a canvas, paint, brushes, and frame. I use the brushes to apply the paint to the canvas and the frame to finish the piece. The customer has bought the canvas, the paint that is on the canvas, and the frame. Do I pay sales tax on all of the items, or are the brushes considered a tool and thus not exempt, but the canvas, frame, and paint are bought by the consumer so I am exempt from paying tax on those? In other words, what supplies are considered "consumed" by me, and which are considered resold to the customer?

Response: Both the materials and the brushes and other items used in the production of the art work are subject to sales tax when they are purchased. If you buy frames and sell them separately from the works of art that you produce and you separately state them on your invoice, you may buy the frames exempt for resale if you hold a valid sales tax permit. Of course, if the frame is sold to a taxable consumer, you would charge sales tax when it is sold.

6. Would I be considered a manufacturer if I painted artwork that is sold in galleries that was not previously commissioned? How much instruction is needed from the consumer before it is considered "commissioned" (for example, if a restaurant owner asked me to "paint some paintings" to decorate his restaurant, but gave me no directions as to their content, would that be custom work or manufacturing? What if I sold him paintings that I had already done?

Response: Artists are not regarded as manufacturers under the sales tax code and therefore the exemptions for manufacturing will not apply to artists. If the resturaunt owner commissioned for custom painting, then the gross receipts you receive for renderning the service of producing the works of art would not be subject to sales tax. Please refer to the rule referenced in the answer to question number 1 above.

7. If I don't have many sales (or ANY sales) in a given month, do you still want me to file monthly sales/use tax forms? Is there a schedule for low-volume businesses that only need to file each quarter? If so, what is the minimum volume/income?

Response: You must submit a sales tax report each month unless you have a tax liability of less than $50 each month and you have previously been approved by the Oklahoma Tax Commission to pay on a semiannual basis. Please refer to Oklahoma Tax Commission rule 710:65-3-1.

8. If a customer leases the rights to reproduce my artwork do I charge sales tax? What if I give the customer the image on disc to give to the printer (but don't charge any extra for the disc)? If I email the file to the customer or printer? What if I give the customer an actual drawing to use, but the value of the piece is in the printing rights, not the actual drawing (the drawing is destroyed or filed as part of the printing process after the printing)? Would the incidental images that the customer uses to review the artwork before the image is printed be considered "tangible goods"?

Response: If you are selling a work of art that has not been commissioned, or if commissioned, to a person that did not commission the work, the entire gross receipts of the sale is taxable if any tangible personal property is transferred, without deduction for the amounts paid for the right to reproduce the work. Please see rule 710:65-1-9.

9. If my artwork is sold through a gallery, am I considered a wholesaler to the gallery, or a partner? If the gallery takes a percentage commission (such as I get 60% of the sale and the gallery 40% of the sale), do I handle the whole sales tax collection or do I send in 60% of the sales tax and the gallery send in 40%?

Response: If you are consigning your work to an art gallery, the gallery should collect the sales tax on the sale of the work of art to the consumer and remit it directly to the Oklahoma Tax Commission. Please refer to the response to question number two above.

9. If I drive to the Phonebook Company office in County and give them a check to run an ad for me, but I live/work in County, does or get the sales tax?

Response: The answer to this question depends on whether the sale was made through soliciation at the place of business of the yellow page company or at some other place. Please refer to rule 710:65-17-1.

This response applies only to the circumstances set out in your request of May 14th, 2002. Pursuant to Commission Rule 710:1-3-73 (e), this Letter Ruling may be generally relied upon only by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law.

Sincerely

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