



STATE BOARD OF EQUALIZATION

November 20, 1969

Gentlemen:

In reviewing your file, we understand that you are in the business of manufacturing and leasing special audio tapes to various radio stations throughout the country, including California. Because certain of your customers have resisted paying use tax to you, you request in your letter of October 13, 1969, that we make a formal ruling regarding:

1. Your obligation as lessor to collect the tax.
2. The radio station's obligation to pay the tax to you
3. Your compliance with the registration requirements with the State of California.

As a lessor manufacturer of tangible personal property, you are required to collect the California use tax on any rental receipts you receive while the property is in this state (§§ 6203(c) and 6006.1 of the Revenue and Taxation Code). This is to be collected when you collect your rental receipts (§ 6203). If the amount is not collected, it is a debt due and owing to the state (§ 6204). As a debt, the state may proceed directly against you for such tax unless it has been paid directly to the state by the purchaser-lessee (see Regulation 1685 and Ruling 76, copies enclosed). It should be noted that the primary liability for the tax is upon the purchaser. Consequently, when a retailer (lessor) pays an amount of tax to the state in satisfaction of the liability imposed under Sections 6204 and 6203, the tax implies an obligation on the part of the purchaser to reimburse the retailer for the amount so paid. Brandtjen & Kluge v. Fincher, 44 Cal.App.2d 939, 111 Pac.2d 979.

We have taken the position that audio tapes are not within the exclusion provided in Section 6006(g)(1). The tapes mentioned therein are limited to television and motion picture films and tapes which are video as well as audio. We do not consider such a distinction as unconstitutional.

Summarily, you are obligated to collect the tax as the lessor manufacturer of the tapes, and the lessees are obligated to pay you the tax unless they pay it directly to the state. We note that you are registered to collect the tax as of October 16, 1969. Note – the purchasers should receive and retain a receipt for the payment of such tax paid to you per Ruling 76.

Very truly yours,

Glenn L. Rigby
Tax Counsel

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Enclosures

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