



STATE BOARD OF EQUALIZATION

April 25, 1966

Attention:

Contracts and Insurance Consultant

Gentlemen:

This is in reply to your letter of April 4, 1966, requesting our interpretation of the proper application of the California sales and use taxes to your plan for distributing motion picture films, film strips, and equipment to churches in California. The plan calls for each church to pay \$75 a year to participate. For the yearly charge, they receive a number of film strips outright and the use of motion picture films and motion picture projectors. The church may instead choose to lease the equipment for a period of two years with an option to purchase at the end of the period.

The \$75 a year charge constitutes in part the selling price of film strips furnished during the year and in part the rental of motion picture films and equipment. Under §6006 (g) of the California Sales and Use Tax Law, a copy of which is enclosed, leases of motion pictures cannot be considered as sales subject to the tax. The application of tax to motion pictures is that the lessor is treated as the consumer, and tax applies to the sale to him. If he purchases the motion picture from an out-of-state source and uses it principally in California, his use is subject to use tax and should be reported on his return.

As the lessor of the equipment, tax applies to either the sale to you or the lease by you at your option. This is because under §6006 (g) (4) the property is leased in substantially the same form as acquired.

It will be necessary for you to break down the \$75 a year charge in the amounts attributable to the three different areas, the film strips, motion pictures, and the equipment. This allocation is reasonable, there should be no difficulty.

You also mention a lease with an option to purchase which you, as lessor, entered with the churches for the equipment. Unless the option price is nominal, tax applies as mentioned in the paragraph above to the option price when it is exercised. If the option is nominal, we consider the transaction to be a conditional sale and subject to tax as a complete sale when made. Tax is measured by the total rental payments less financing charges.

The fact that billing is done from Nashville and payment will be sent to Nashville does not change the application of the tax. Since you have an office in this state, you are required to collect the use tax from California users in any situations in which sales tax would be applicable had the sale occurred in California.

If you have any further questions concerning the film distribution plan or this lease, please feel free to call on us.

Very truly yours,

John H. Knowles
Associate Tax Counsel

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Enclosure
cc: Fresno – District Administrator



STATE BOARD OF EQUALIZATION

cc: San Jose – District Administrator

April 26, 1966

Attention:

Accountant

Gentlemen:

This is in reply to your letter of April 19, 1966, concerning the application of California sales and use taxes to motion picture rentals. Enclosed is a copy of ruling 70 which explains the application of tax to rental transactions. You will note the application of tax was charged on August 1, 1965.

Prior to this date, lessor of tangible personal property had the option to pay tax on their cost or to treat their leases as sales and report tax on rental receipts. In the latter case, they ordinarily passed the tax on to their customers.

Since August 1, 1965, the application of tax to rentals of motion pictures differs from the application of tax to other rentals. The law was changed to make rentals taxable but motion picture rentals were excepted from the statutory change. Therefore, lessor of motion pictures cannot now elect to treat their rentals as sales. Rather, they are consumers of the property and the sale of the films to them is the retail sale subject to tax.

Motion picture lessors who acquire films prior to the date of the change may have exercised the option to be taxed on rental receipts. With respect to older films then, they may quite properly be charging you tax on rentals. Out-of-state lessors doing business in California are required to pay sales or use tax to the state depending on the circumstances. A customer really has no way to tell with respect to the older films whether the particular lessor has elected to be taxed on rental receipts. Both California and out-of-state concerns, however, are audited by our auditing staff and if excessive tax is being collected from customers, we will require it to be returned to the customers or, in the alternative, paid to the state. With respect to more recent films, the customer may object to a film lessor charging sales or use tax computed at 4 per cent of the rental price.

Very truly yours,

John H. Knowles
Associate Tax Counsel