

**STATE BOARD OF EQUALIZATION**

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December 20, 1991

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Dear ---:

This is reply to your November 7, 1991 letter regarding the application of sales tax to charges by your client for models. You note the following facts:

“The taxpayer is a California corporation with its’ permanent business location in California. Most of the efforts of its’ employees occur in California, although employees may travel to filming locations outside the California.

“Taxpayer is engaged in the business of creating masks and models (items) that are used to generate ‘special effects’ in motion pictures and television commercials. The terms ‘model’ and ‘special effects’ in this letter are used in a manner consistent with the definitions at Reg. 1529(d)(6) and (13). The items are created at taxpayer’s business location in California and may be built of wood, plastic, rubber, other synthetic materials and may or may not contain mechanical parts. The finished items are then transported to a location where the ‘special effects’ are created by filming the items. In some instances taxpayer’s employees accompany the items and manipulate the items in the course of filming. The filming is not done by taxpayer. The items belong to taxpayer and legal title is not transferred to the production company; however, there may be contractual restrictions on taxpayer’s ability to use images of the items without permission.

“Taxpayer is compensated on a contractual basis, generally on a fixed fee arrangement. Taxpayer is generally awarded contracts on a competitive basis which considers the cost to the production company and the creative talents of taxpayer. The cost of the materials used to generate the items is generally a small percentage of the total compensation that it receives. Taxpayer’s largest cost of doing business is personnel costs needed to create the items.”

Given this information, you requested our opinion that, "Taxpayer's activities as a creator of models that are filmed by other persons (such film which is incorporated in a qualified motion picture) constitute qualified production services and taxpayer is not considered as renting out the underlying item."

We cannot provide such an opinion. When your client transfers possession of the masks or models to the customer in this state or operates models under the direction and control of his or her customer in this state, your client makes a lease of the tangible personal property for purposes of the sales and use tax. (Sales and Use Tax Reg. 1660, Leases of Tangible Personal Property-In General, subd. (a)(1).) Your client is responsible for collecting use tax from the lessee at the time rentals are paid by the lessee. (Sales and Use Tax Reg. 1660, subd. (c)(1).)

As you know, Sales and Use Tax Regulation 1529, Motion Pictures, defines "qualified production services" at subdivision (b)(2) to mean any fabrication performed by any person on film, tape, or other audiovisual embodiment. The definition was derived from subdivision (b)(4) of section 6010.6 of the Revenue and Taxation. Subdivision (a)(1) of section 6010.6 provides that persons performing qualified production services are consumers of painting, models, and artwork used by those filming special effects, titles, or credits. Tax applies to the sale or lease to such persons of the models, artwork, and other tangible personal property for such use. (Sales and Use Tax Reg. 1529, subd. (a)(1).)

Your letter suggests that subdivision (b)(2)(B)2 of Regulation 1529 provides a basis for excluding the charge for the models from the sales tax. We disagree. The subdivision provides that the transfer of the models "in connection with the performance of qualified productions" is nontaxable. Your client does not perform qualified production services by leasing masks and models to the customer. As noted in subdivision (b)(2) of Regulation 1529, sales of tangible personal property to persons who perform qualified production services are subject to tax.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick  
Senior Tax Counsel

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