

From: Jarvis, Sharon
Sent: Thursday, February 17, 2005 10:15 AM
To: Rosenthal, Dave
Cc: Lyle, Geoff; Anderson, Vic
Subject: Annotations 330.2890 & 295.0365 (11/12/74)

These annotations are identical. They deal with charges for taped music obtained from a music library. The annotation should be amended so that the first sentence refers to the fact that a music library is involved, i.e., "An owner of a library of tape recorded music" Also, although neither the letter nor the annotation refers to Reg. 1527 Sound Recordings, the issue is covered in Reg. 1527(d) -"Tax applies to rentals of records and other tangible personal property by library producers in the same manner as it does to rentals generally whether designated as a license to use or otherwise." Perhaps this part of the regulation was added after the 1974 letter was written. In any event, a note should be added after the annotation referring to Reg. 1527(d).



STATE BOARD OF EQUALIZATION

November 12, 1974

In a letter to you of November 24, 1965, we advised you that charges for a license to use music were not subject to sales or use tax in two situations: (1) where you make available to clients a library of tape recorded music, the clients requisition the tapes they wish to use, a sound laboratory transfers the music to tapes furnished by the clients and bills the clients accordingly, the original tapes are returned to you, and you then charge the clients for a license to use the music; and (2) where you rent a large selection of taped music to clients for a specified amount and then bill the clients for a license to use the music.

The views expressed in our letter to you were digested and published in the various tax services. The digests presently appear in our Business Taxes Law Guide as annotations 330.2200 and 527.0200. A copy of the letter, showing the digests as previously numbered, is enclosed.

Inquiries from other taxpayers based on the published annotation 527.0200 (1381.30 in the letter) have compelled us to reconsider the views expressed in our earlier letter. We have found that those views are inconsistent with our position in other, similar situations involving the taxability of, charges for rights to use property. In particular, they are inconsistent with section (f) (1) of Regulation 1502, which deals with the application of sales or use tax with respect to programs on magnetic tape for use in connection with automatic data processing equipment. That section of the regulation, a copy of which is enclosed, provides in part as follows:

Tax applies whether title to the tape or other property upon which the program is coded, punched or otherwise recorded, passes to the customer, or the program is recorded on tape or other property furnished by the customer. The temporary transfer of possession of a program, for a consideration, for the purpose of direct use or to be recorded by the customer, is a lease of tangible personal property and the tax applies unless the property is leased in substantially the same form as acquired by the lessor and the lessor has paid sales tax reimbursement or use tax with respect to the property.

Tax applies to the entire amount charged to the customer. Where the consideration consists of license fees or royalty payments, all license fees or royalty payments, present or future, whether for a period of minimum use or for extended periods, are includable in the measure of tax.

It is our view that in both of the situations described in the first paragraph of this letter, you are, by transferring possession of a tape to the client or to a sound laboratory at his direction, making a taxable lease of the tape, the taxable consideration for which includes the amounts he is to pay for a license to use the music, assuming that you did not pay tax or tax reimbursement on the cost of the finished tapes in your library when you acquire them. The sound laboratory is also subject to tax with respect to the charges made by it.

You should be guided by this letter with respect to any future transactions of the kind in question. The published digests of the previous letter will be revised accordingly

Very truly yours,

T. P. Putnam
Assistant Chief Counsel

TPP: lb
Enclosures
bc: Hollywood - Dist. Admin.