

M e m o r a n d u m

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To : Mr. J. W. Cornelius, Supervisor
Audit Evaluation and Planning
MIC:40

Date: January 21,
1997

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Subject: Electronic Press Kits

This is in reply to your December 20, 1996 memorandum regarding the application of sales tax to charges by a video duplicator.

A November 22, 1996 memorandum sent by the audit staff of the Culver City office to the Program Planning Manager regarding this case notes the following facts:

“Currently we are auditing the books and records of a video duplicator. Taxpayer manufactures copies of electronic press kits (usually 500 - 600 video tapes per customer), from a master provided by a movie studio, and ships them to television studio (sic) through out the country.

“Electronic press kit is either a 3/4 or 1/2 inch video tape prepared by movie studios prior to the release of a new film. The tape will consist of several interviews with the star or co-stars and various clips from the movie. There are gaps or blank time spots between every interview and movie clip. These gaps are left intentionally so that local TV stations will be able to impose their film reviewer to the tape, edit and customize the tapes as they wish prior to the broadcast. For example, a movie reviewer for NBC might use part of one of the interviews with Tom Cruise and 60 seconds clip from the movie Mission Impossible in his or her presentation to the TV audience. The taxpayer receives a completed master and then manufactures 500 to 600 copies which are shipped throughout the nation.”

Given this information, you asked for our opinion as to whether the copies of the press kits are the product of qualified production services provided by the taxpayer.

Revenue and Taxation Code section 6010.6 provides that “sale” and “purchase” do not include the performance of qualified production services in connection with the production of all or any part of any qualified motion picture. Subdivision (b)(4) of section 6010.6 defines “qualified production services”:

“‘Qualified production services’ means any fabrication performed by any person in any capacity (whether as an employee, agent, independent contractor, or otherwise) on film, tape, or other audiovisual embodiment in connection with the production of all or any part of any qualified motion picture, including, but not limited to photography, sound, music, special effects, animation, adaptation (language, media, electronic, or otherwise), technological modifications, computer graphics, dubbing, mixing, editing, or cutting services. ‘Qualified production services’ do not include services or other work to manufacture release prints or to duplicate tapes for exhibition or broadcast.”

We do not believe that the taxpayer provides qualified production services to the studio “in connection with the production of all or any part of” the electronic press kits. Rather, subdivision (b)(4) of section 6010.6, quoted above, appears to be on point. The statute specifically excludes from the “qualified production services” definition “services or other work to manufacture release prints or to duplicate tapes for exhibition or broadcast.”

The facts do not show the taxpayer performs any work in connection with the production of the press kit. The studio which provides the press kit master to the taxpayer has completed production of the press kit. The taxpayer merely manufactures duplicate tapes for exhibition or broadcast by the television stations.

Please obtain the account number of the taxpayer in question. Please also inform the district office of the need to always provide the account number when requesting an opinion, so we can properly document the taxpayer’s file.

RLD:sr