

**STATE BOARD OF EQUALIZATION**

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July 11, 1989

Ms. P--- H---
Accounting Supervisor
S---, Inc.
XXX --- Street
---, CA XXXXX

Re: SR -- XX-XXXXXX

Dear Ms. H---:

This is in reply to your May 18, 1989 letter regarding the application of sales tax to your charges for providing videotape equipment, labor, and other post-production services to your clients. You provided the following specific questions:

“1. We provide videotape equipment and labor in the production of live satellite uplinks to locations out of the state and out of the country. In some instances, these services provide a signal feed to rented phone lines, but the live broadcast is not recorded onto videotape. What status do these services have in regard to California sales and use taxes? If, in other instances, the live broadcast is recorded onto videotape, does the sales and use tax status change? Is the controlling factor determined by whether or not the videotape recording will be re-edited later for future broadcast? Does the use of client-owned videotape stock effect the sales tax determination?”

If you provide equipment and a crew to only transmit a signal feed to telephone lines, and you do not record the signals on videotape, you do not thereby produce tangible personal property, and your charge to the client is not subject to sales tax. Assuming that you have paid sales tax reimbursement or timely paid use tax on your purchase of the equipment, no further tax is due as a result of your charges.

If you do record the signal on videotape and transfer the tape to your client, you thereby produce tangible personal property; however, under recently enacted Revenue and Taxation

Code section 6010.6, if the videotape you transfer to the client is a "qualified motion picture" as defined in section 6010.6, your transfer is not subject to tax. Rather, you are the consumer of, and tax applies to the sale to you of, the videotape stock which you record and transfer to the client. We are enclosing a copy of the proposed revisions to Sales and Use Tax Regulation 1529 which represents the Board's staff's view of the application of tax under section 6010.6. Subdivision (b)(1) of the regulation defines a qualified motion picture generally as "any motion picture or portion thereof, whether finished or not, which is produced adapted, or altered for exploitation in, on, or through any medium or by any device for any purpose, including, but not limited to, any entertainment, commercial, advertising, promotional, industrial, or educational purpose." The term does not include motion pictures produced for private noncommercial use, such as motion pictures of weddings or graduations to be used as family mementos, accident reconstruction videotapes to be used for legal analysis, or student films to be used for class projects.

Your transfer of the videotape is nontaxable regardless that the client may re-edit the tape for future broadcast. However, if you provide to the client duplicate copies which are complete in all respects and which the client will exhibit or broadcast, your sale of such duplicate copies is subject to tax. (Rev. & Tax. Code § 6010.6, subd. (c)(2). See also subd. (b)(3) on page 5 of Proposed Reg. 1529.) In answer to your question whether the application of sales tax is affected by S---'s use of its own videotape stock or a client's videotape stock, the application of tax to your transfer of the recorded videotape is the same. As noted above, tax applies to the sale to you of videotape stock you use in producing qualified motion pictures for your client. Assuming that you have properly paid tax upon purchasing or using such stock, no further tax is due.

"2. We provide film-to-tape transfer services for corporate clients to produce in-house videotapes for training, demonstrations, research and development, etc. Do these projects qualify as release prints or qualified motion picture production services, exempt from taxation?"

Although motion pictures produced by corporations in-house for training, demonstrations, and research and development are qualified motion pictures, when you provide film-to-tape transfer copies to the client to use for exhibition or broadcast, tax applies to your sale. (Rev. & Tax. Code § 6010.6, subd. (c)(2).)

"3. We also provide film-to-tape transfers of student films made for term projects in university classes. Since these are non-commercial projects at the time of transfer, are they release prints subject to taxation, or qualified motion picture production services?"

It is our opinion that qualified motion pictures do not include such student films made for class projects. (See Proposed Reg. 1529, subd. (b)(1)(B).) Tax applies to your charge for film-to-tape transfers of such student films or videotapes.

Ms. P--- H---

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

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD:sr

bc: --- District Administrator