

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6450

July 5, 1989

Mr. E--- E---
E--- Media
XXX West --- Avenue, Suite XXX
--- ---, CA XXXXX-XXXX

A--- C---

Dear Mr. E---:

This is in reply to your April 28, 1989 letter regarding the application of sales tax to your charges in connection with the production of a satellite broadcast or teleconference and the videotaping of that broadcast.

You noted that A--- C--- has retained you to produce the broadcast which will be aired to A--- C--- employees nationwide. The three and one-half hour broadcast announces new products to A--- C--- sales and support staff. You noted that you are the producer and director of the broadcast, and, as such, you are ultimately responsible for the broadcast's content and physically directing "on-line" during the airing. Your invoice will contain the following line items:

- "a. Labor, including writing, producing, directing and editing.
- "b. Outside vendor services, including rental of a camera crew which will supply their own equipment.
- "c. A 15% markup that will apply only to the outside vendor services billed through A--- C---."

You note that, although you understand the provisions of Sales and Use Tax Regulation 1529, the regulation does not address the situation you present.

As a result of the addition of section 6010.6 to the Revenue and Taxation Code effective September 22, 1988, the State Board of Equalization is in the process of substantially revising Regulation 1529. A copy of the proposed regulation is attached for your information.

Under section 6010.6, subdivision (a)(2), tax does not apply to the transfer of a qualified motion picture when either:

- “(A) The transfer is made prior to the date that the qualified motion picture is exhibited or broadcast to its general audience.
- “(B) The transfer is made to any person or persons holding, either directly or indirectly, or by affiliation, any exploitation rights obtained prior to the date that the qualified motion picture is exhibited or broadcast to its general audience.”

Also, under subdivision (a)(1) of section 6010.6, tax does not apply to charges for 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 first note that we believe the videotapes you prepare and transfer to A--- C--- which announce new products to A--- C---’s staff qualify as qualified motion pictures. Tax does not apply to your charge to A--- C--- for the qualified motion pictures. However, the exclusion from tax is not applicable to the sale or purchase of release prints or tapes for exhibition or broadcast. (§ 6010.6, subd. (c)(2).) Therefore, although your charge for the initial tape you provide to A--- C--- is not subject to tax, if you provide A--- C--- with duplicate tapes for exhibition or broadcast, tax applies to your charge for such tapes.

If you perform editing on A--- C---’s videotape of the “video roll-in,” your charge is nontaxable as a charge for qualified production services. Similarly, if you contract with another vendor to provide a camera crew with a camera to photograph the event, the charge to you by the vendor is nontaxable as a charge for qualified production services.

Mr. E--- E---

-3-

July 5, 1989
375.0985

We hope this answers your question; however, if you need further information, feel free to write directly to me.

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD:sr

Attach.