

**STATE BOARD OF EQUALIZATION**

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

March 15, 1989

Mr. M--- K---  
President  
E--- P---  
XX --- ---, Suite XXX  
--- ---, CA XXXXX

SR -- XX-XXXXXX

Dear Mr. K---:

This is in reply to your January 26, 1989 letter regarding the application of sales tax to charges by E--- P---, Inc., based on the following description you provided:

“E--- P---s is contracted to produce a Sales Support and Training videotape. Our client is an Advertising Agency which has developed the concept for the videotape after a series of meetings with the Agency’s client, for whom the videotape is ultimately intended. E--- is producing the videotape for the Advertising Agency which is contracted to develop the concept for the videotape, by the ultimate user of the videotape.

“The Advertising Agency provides E--- with a script and provided creative direction whenever appropriate throughout the production. E--- provides producing and directing services; contracts talent, crew and equipment, and editing services.

“E--- provides the Advertising Agency with a finished master tape and the required number of copies of the final version (usually 5 to 10 copies).

“The production is produced according to an agreed upon budget which details all costs. Increases or decreases in costs are adjusted at the end of production if there are variations between budgeted and actual amounts.”

You noted that you interpret Sales and Use Tax Regulation 1529 that, as a producer, E--- is the consumer of film, videotape, and other tangible personal property which it uses in making the production. You also understand that sales tax does not apply to E---'s charge to the advertising agency for the completed production.

As a result of the passage of 1988 Senate Bill 1405, copy enclosed, section 6010.6 was added to the Revenue and Taxation Code, effective September 22, 1988. Consequently, various provisions of Sales and Use Tax Regulation 1529 have been superseded by the new legislation.

Under the provisions of 6010.6, the sales support and training videotape which you produce is a "qualified motion picture". (§ 6010.6, subd. (b)(3).) E--- is the consumer of tangible personal property which E--- uses in producing the videotape, except for the raw stock upon which E--- records the duplicate tapes for exhibition or broadcast. (§ 6010.6, subd. (a)(1) and (c)(2).) The result of E---'s being the consumer of tangible personal property is that tax applies to the sale of such property to E---.

Under section 6010.6, subdivision (a)(2), sales tax does not apply to E---'s charge to the advertising agency for the master tape. Sales tax does apply to E---'s charge for the duplicate copies produced for exhibition or broadcast. E--- may accept a resale certificate from the advertising agency when the advertising agency purchases such duplicate copies for resale to the client.

We hope this answers your question; however, if you need further information, feel free to write again. We are also enclosing a copy of a one-page overview of the new section for your further information.

Very truly yours,

Ronald L. Dick  
Tax Counsel

RLD:sr  
Encs.

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1020 N STREET, SACRAMENTO, CALIFORNIA  
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(916) 445-6450

June 9, 1989

M--- K---  
President  
E--- P---  
XX --- ---, Suite XXX  
--- ---, California XXXXX

Re: SR -- XX-XXXXXX

Dear Mr. K---:

This is in reply to your April 10, 1989 letter regarding the application of sales tax to charges by E--- for a video tape which E--- produces for an advertising agency. You restated the following facts from your January 26, 1989 letter:

“E--- P--- is contracted to produce a Sales Support and Training videotape. Our client is an Advertising Agency which has developed the concept for the videotape after a series of meetings with the Agency’s client, for whom the videotape is ultimately intended. E--- is producing the videotape for the Advertising Agency which is contracted to develop the concept for the videotape, by the ultimate user of the videotape.”

“The Advertising Agency provides E--- with a script and provides creative direction whenever appropriate throughout the production. E--- provides producing and directing services, contracts talent, crew and equipment, and editing services.”

“E--- provides the Advertising Agency with a finished master tape and the required number of copies of the final version (usually 5 to 10 copies).”

“The production is produced according to an agreed upon budget which details all costs. Increases or decreases in costs are adjusted at the end of production if there are variations between budgeted and actual amounts.”

After reviewing our March 15, 1989, letter, you have the following questions:

1. “Would sales tax apply to E---’s charge to the advertising agency for productions completed prior to September 22, 1988?”

Sales and Use Tax Regulation 1529, Motion Pictures, defines “production” at subdivision (b) (1):

“‘Production’ means a motion picture prepared for showing on screens or through television for theatrical, commercial, advertising or educational purposes. The motion picture may be on film or videotape and have live, or animated, or a combination of live and animated action. Herein, the word ‘film’ includes video tape or other recording media. The motion picture may tell a story, explain, describe, promote, or announce an idea, project, program, process, product, or event. But in order for a motion picture to constitute a production, it must be entirely on motion picture film, have continuity and direction, and be complete in itself, as distinguished from ‘trailer’ or ‘stock’ shots.”

Assuming that the Sales Support and Training videotape you produce qualifies as a “production” as defined above, tax does not apply to either E---’ charge to the advertising agency nor to the advertising agency’s charge to its client for the production. Rather, E--- is the consumer of the production and tax applies to sales to E--- of tangible personal property which E--- uses in making the production. (Reg. 1529 (c) (1) (A).)

2. “If a specific number of copies of the master tape are included in the original budget-contract: does sales tax apply to these duplicate copies for sales completed prior to September 22, 1988?”

No, the master tape and copies of the master tape specified in the original contract between E--- and the advertising agency, as a firm order, are part of the production and E--- is the consumer of such copies. (Reg. 1529 (c) (1) (B).) Tax applies to sales to E--- of the property used to make such copies.

3. “If a specific amount or number of the master tape are included in the original budget-contract: does sales tax apply to these duplicate copies for sales completed after September 22, 1988?”

Yes, the transfer of the duplicate tapes for exhibition or broadcast for a consideration is not within the exclusion from "sale" and "purchase" provided by subdivision (a) of Section 6010.6. (See subdivision (c) (2) of § 6010.6.) Therefore, the retail sale of such duplicate copies is subject to sales tax whether or not such copies were specified in the original contract. Since E--- is producing the videotapes for the advertising agency to sell to its client, the sale of the duplicate copies by E--- is a sale for resale, and E--- may accept a resale certificate from the advertising agency. As discussed in our March 15, 1989 letter to you, based on the facts you provide, under Section 6010.6, E--- would be the consumer of the master tape transferred to the advertising agency.

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/smt:1422C