



515.1970

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

(916) 445-6450

August 25, 1987

Dear REDACTED TEXT,

Your August 14, 1987 letter to REDACTED TEXT has been referred to the legal staff for reply.

You requested an opinion as to the application of sales tax to your charges to a motion picture production company for applying expendable make-up to actors, actresses and other performers. You sent the following definition of a make-up artist which was provided to you by the REDACTED TEXT the United States and Canada, Make-Up Artists and Hair Stylists Local 706:

“The make-up artist applies make-up to actors, actresses and other performers to enhance or alter their appearing in accord with their roles. This includes application of all types of beards, chin pieces and eyebrows on live performers. The make-up artist makes up and applies prosthetic appliances and make-up designed to change such physical characteristics of performers as facial features, skin texture and body contours.”

You noted that all prosthetic appliances which you apply to the skin of a performer are expendable, and you much replace them each day the same as the make-up which you use to cover the appliances.

The California sales tax is imposed upon retailers for the privilege of selling tangible personal property at retail in this state. (Rev. & Tax. Code § 6051.) On the other hand, when the performance of a service is the true object of a contract, tax does not apply to the charge for the service even though some tangible personal property is transferred incidental to the performance of the service. (Sales and Use Tax Re. 1501.)

Based on the job description you provided, we believe that make-up artists perform a service when applying make-up and expendable prosthetic appliances to actors, actresses and other performers. Accordingly, tax applies to the sale to you of the materials you consume in applying the expendable prosthetic appliances. Tax does not apply to your charge to the production company for your performance of the service in applying the make-up.

It is the policy of the Board's legal staff to not interfere with an audit which is in progress. Although we have given an opinion based on the facts you provided, there may be other issues in the audit which need resolution. We suggest that, if the audit staff issues a notice of determination with which you do not agree, you should petition for redetermination and request a preliminary hearing before a hearing office.

Very truly yours,

Ronald L. Dick
Tax Counsel