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

October 6, 1989

Mr. R--- D---
R--- D--- M---, Inc.
XXXX --- Drive
--- ---, CA XXXXX

SR -- XX-XXXXXX

Dear Mr. D---:

This is in reply to your August 9, 1989 letter regarding the application of sales and use tax to your production of sound recordings.

You first note that Sales and Use Tax Regulation 1527, Sound Recording, provides at subdivision (b)(1) that the term "master tapes and master records embodying sound" includes "tapes or records which are produced for use as radio commercials or other advertising, syndicated radio programs or for educational purposes." You asked to what the regulation refers by "other advertising." The regulation is merely referring to tapes and records which would be used for advertising other than radio commercials. For example, a tape which is produced for use by a supermarket to play over its sound system to advertise products would qualify as a master tape under the regulation.

You noted the following explanation of your transactions:

> "2. My company produces radio and TV commercials for the advertising agencies. I do all the auditioning, hiring and directing of singers and musicians. I chose the time and place of the recording session. I write and arrange the music. I hire a copyist to notate the music. I purchase the 24 track 2" tape, which is not the final product. From the 2" 24 track I mix down to a ¼" Mono or Stereo Master and 3-4 cassette copies. I send the master the advertising agency, the agency then mixes the voice over announcer, sound effects and other sound elements at a final post production mix down studio."

You note that the music made from the ¼" master is often used for both radio and television. You do not issue a resale certificate to purchase any of the blank tape stock. You asked whether you should issue a resale certificate and report and pay sales tax on your sales.

Since you purchase the 2" tapes to use in manufacturing the ¼" tapes rather than to sell to your clients, you should not issue a resale certificate on your purchase of the 2" tapes. The remainder of this letter will concern the tapes and blank tape stock which you purchases to transfer to your clients. On and after September 22, 1998, when you produce a sound recording which will be used in the production of a film or videotape television commercial, you perform a "qualified production service" under the provisions of Revenue and Taxation Code section 6010.6. Tax does not apply to your charge to your client for such videotapes. Rather, you are the consumer of, and should pay sales tax reimbursement or use tax on, your purchase of the tapes. We are enclosing a copy of proposed Regulation 1529 which further explains the application of tax under section 6010.6. Although the State Board of Equalization has adopted the regulation, it must be approved by the Office of Administrative Law before it becomes effective.

When you produce a sound recording which will be used for the purposes described in Regulation 1527, you are the retailer of the tape, and sales tax applies to your sale. However, the measure of your sales tax is limited to the sales price of the blank tape stock.

Since you unaware at the time that you purchase the blank tape stock whether you will consume it in providing "qualified production services" or sell the tape as "master tapes and master records embodying sound" under Regulation 1527, you may issue a resale certificate on your purchase of all such blank tape stock. You may then report and pay use tax on the cost of the tapes you consume in performing "qualified production services" on motion pictures by reporting the cost on line 2 of your sales and use tax return. When you produce a sound recording which your client will use for both radio and videotape or motion picture commercials, you may report the cost of the tape on line 2 and consider that you are using the tape in performing qualified production services.

You asked whether you should charge tax for studio rentals and equipment rentals. As noted in subdivision (a)(2) of Regulation 1527, to the extent you rent tangible personal property to your customer, tax applies in the same manner as it does to rentals generally. If, by studio rentals, you are referring to the real property, tax does not apply to such charge. Assuming that you have paid sales tax reimbursement or timely paid used tax on your purchase of your equipment, and you rent the equipment in substantially the same form as you acquired it, tax does not apply to your charge for renting your equipment to a client.

You asked whether you should charge tax on the cost of the labor for musicians, singers, and arrangers, or on your creative and production fee. You note that the creative and production fee is a charge for your sale of the copyright of the melody you create. As noted above, when you make sales of recordings which qualify as "master tapes and master records embodying sound" as defined in Regulation 1527, tax applies only to your charge for the blank tape stock.

Tax does not apply to your charge for labor and recording the sound, services rendered in producing, fabricating, processing or imprinting the master tapes, or any other services or production expenses or amounts paid for the copyrightable, artistic, or intangible elements of the master tapes or master records, whether designated as royalties or otherwise. (See Reg. 1527, subd. (b)(2).)

You note that your legal advisors and the advertising agencies' legal staffs believe you are a "co-producer" as defined in Sales and Use Tax Regulation 1529, Motion Pictures. The application of sales tax to charges for recording sound for the motion picture industry was changed substantially effective September 22, 1988. As noted above, your charges for such work are now nontaxable charges for "qualified production services."

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
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