



STATE BOARD OF EQUALIZATION

(916) 445-6450

June 17, 1986

Dear ---

This is in reply to your May 14, 1986 letter regarding the application of sales tax to your charges under the facts you provided for the following situation:

"The situation that exists where I feel that I am responsible for charging 6.5% sales tax on the labor is where I build the prop for a production company and sell it to them.

"For example, currently I am working on a commercial for --- --- . They had come to me originally with drawing and concepts for items that they wanted me to contract and produce. Those items consisted of a small section of a boat hull, a miniature boat, a large painting of a sky, and some break-away champagne bottles. All of these items were designed and built by my company and ultimately sold to --- ---. They will remain in --- as their property."

We first note that the sales tax is imposed directly upon the retailer for the privilege of selling tangible personal property at retail in this state. Therefore, whether or not you charge your clients sales tax reimbursement is a matter of contract between you and your clients. We agree with your conclusion that sales tax applies to the transactions you described in this situation. You make a retail sale of tangible personal property to ---.

You asked that we consider that you merely subcontract with --- --- --- who is actually supplying the ultimate product -- the commercial. We considered such fact and conclude, nonetheless, that your sale of the props to --- --- is a retail sale to which sales tax applies, because your sale is "for any purpose other than resale in the regular course of business in the form of tangible personal property." See section 6007, Revenue and Taxation Code.

"The second situation, which I do not feel I should be responsible for, is the bulk of my work. Working on a feature film, my company will supply a service, but not actually any props. For example: I am currently working on a film called --- -- - being directed by --- ---. On this film there are many action sequences which

require bullet hit effects, pyrotechnics, break-away props and special effect elements such as, wind, rain, fire, smoke and fog."

If you retain title to and possession of: and you or your employees operate, the equipment which causes the bullet hit effects, pyrotechnics, and special effect elements such as the wind, rain, fire, smoke, and fog, you do perform a service for the client and are the consumer of the equipment you furnish. Tax applies to the sale to you of the equipment. If you place a break-away prop on a set, and the actor or other person who is not your employee destroys the break-away prop, it is our opinion that you have made a sale of the break-away prop. Tax applies to your charge. If you make a temporary transfer of a reuseable break-away prop, we believe that you make a lease of the prop. See Sales and Use Tax Regulation I 660(a) which includes in the definition of "lease" a contract under which a person secures for a consideration the temporary use of tangible personal property which is operated by, or under the direction and control of, the person or his employees. In such case, the applicable tax is a use tax upon the use in this state of the property by the lessee. You, as the lessor, are required to collect the use tax from the lessee (see Reg. I 660(c)(1)).

You asked whether the recent article in the --- --- --- regarding the recent rejection of amendments to Sales and Use Tax Regulation 1529 relieves you from the responsibility for payment of sales tax. No. Presently, Regulation 1529 provides that, when a company such as --- transfers title to a commercial which qualifies as a motion picture production, tax does not apply to the transfer. The proposed amendments would have imposed the sales tax on such transfers of commercials. In other words, the commercials would have no longer qualified as "productions" as defined in the regulation.

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

Very truly yours,

R. L. Dick
Tax Counsel

RLD:sr