



STATE BOARD OF EQUALIZATION

September '28, 1959

Your letter September 17

Attention:

Gentlemen:

You state that you engage the --- company in Glendale, California to edit your tapes which at all times remain your property. These tapes are sent to the ABC and XYZ pressing plants in Hollywood where they are used to make the masters from which records are pressed for sale to your customers.

You inquire as to whether there would be any difference in the application of the California Sales and Use Tax Law to the transaction if the --- company sent these tapes directly to the ABC and XYZ pressing plants rather than have them ship these tapes to your office in Waco, Texas, from where you would, in turn, ship them to the ABC and XYZ pressing plants.

Under Section 606(b) of the California Sales and Use Tax Law a "sale" is defined as:

"The producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting."

We have interpreted this paragraph as applying to a situation where a firm edits tapes or film supplied by the customer. Consequently, insofar as you are the consumer of the tapes (the tapes not being tangible personal property incorporated into the product which you have manufactured) supplied by you to the --- company, we would regard the transaction as a retail sale pursuant to the above-quoted section, by the --- company and, hence, subject to sales tax.

However, where the tangible personal property involved in the transaction is shipped to a point outside this State (California), pursuant to the contract of sale, by delivery by the retailer to such point by means of 1) facilities operated by the retailer, or 2) delivery by the retailer to a carrier for shipment to such point, then such transaction is exempt from the sales tax. The transaction is in interstate commerce; and the Supreme

Court of the United States has held that the imposition of sales tax on the transaction would violate the Commerce Clause of the United States Constitution.

On the other hand, if the tapes are delivered directly by --- company to the pressing plants in Hollywood, the delivery is then made to you or to someone on your behalf here in California and, since there is not interstate commerce involved, the transaction would be subject to the sales tax.

Consequently, the State Board of Equalization cannot authorize the direct shipment by the --- company to the pressing plants in Hollywood as a tax-exempt procedure.

We hope that this letter clearly explains the situation. However, if we may be of any further assistance to you in this matter, do not hesitate to contact us. We are enclosing an extra copy of this letter for your convenience.

Very truly yours,

Stanly G. Lerner
Assistant Counsel

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