

Memorandum

330.2223

To : Mr. Jerry W. Cornelius, Supervisor
Audit Evaluation and Planning Section
(MIC:40)

Date: November 22, 1996

From : Pat Hart Jorgensen

Subject: *W--- B--- Productions Inc.*
SR -- XX-XXXXXX

This is in response to your memorandum of September 11, 1996 in which you inquired about the application of sales tax to a contract to erect and maintain a temporary ice rink.

Your specific inquiry is whether this contract constitutes a contract for a service or the sale of tangible personal property. In your memorandum you state that "it appears that the contract is a nontaxable service since there is no transfer of or possession of the ice rink and maintenance/resurfacing of the rink is provided by the taxpayer." However, you question whether this characterization can be supported in view of the recent publication of Annotation 515.1307 which concludes:

"The manufacture of artificial snow at the customer's site is a sale of tangible personal property subject to sales tax. The true object desired by the customer is the snow rather than the service of making the snow. Items incorporated into the snow and sold in the form of snow may be purchased for resale. 9/15/92."

You also note that the contract contains "aspects of a sale, lease, and temporary improvement to realty."

The contract at issue is one in which the taxpayer, W--- B--- Productions Inc. (B---), provides and installs two ice skating surfaces to be used in the taping of a television special. The contract specifies that installation of the surfaces begin on July 6, with taping scheduled for July 10 and July 11 followed by dismantling of the rinks on July 12. The contract specifies that B--- is to provide 2 ice skating surfaces, and related support equipment such as "header-boards, hoses (up to 100"), and refrigeration container[s];" dasher rails, "consisting of 440' of steel frame with lexan covers;" and tenting material to cover the ice skating surfaces during daylight hours. The contract further specifies that B--- is to provide supervision of the installation, maintenance, resurfacing, and removal of the ice rink and transportation of ice equipment and trained

personnel to and from the rink site. The contractual obligations of the client is to provide generators to power the refrigeration equipment; water for the ice machines; devices, such as wheelbarrows, for disposal of the ice; liability insurance naming B--- as the insured; labor to assist in setting up and breaking down the ice rink; security; parking and site access for B---'s ice engineers; and accommodations for the ice engineers and project managers.

Based on the conditions set out in the contract, it is my conclusion that the contract is for the lease of ice rinks and that Annotation 515.1307, which involves a sale of tangible personal property, is not applicable to these facts.. The purchase of snow was the object of the contracts underlying Annotation 515.1307, whereas in the facts at issue, the object of the contract is not for the purchase of ice but, rather for the lease of two ice rinks. A similar fact pattern is addressed in Annotation 330.2150 (4/23/91) involving design, assembly, and dismantling of temporary "sets" for television commercials and music video productions. Under Annotation 330.2150 it was concluded that the contract was not for a service but for a lease of the sets. Accordingly, this contract should be analyzed in accordance with Regulation 1660.

Annotations 330.3538, 330.3980, and 330.3990 which, respectively, explain the application of sales and use tax on leases of sprinkling systems, leases of irrigation pipe, and leases of scaffolding, should provide additional guidance in analyzing this contract. If you have any further questions please feel free to contact me at 327-2291.

PHJ:cl

cc: Culver City District Administrator