

**STATE BOARD OF EQUALIZATION**

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

December 3, 1990

Mr. [K]
Senior Vice President
[A]
XXX --- ---.
--- ---, -- XXXXX

S- -- XX-XXXXXX

Dear Mr. [K]:

This is in reply to your October 3, 1990 letter regarding the application of sales tax to charges by [A] for what you describe as programming services.

Based on the information you provided, we are unable to discern the nature of your transactions with your customers in California.

Although you categorized your transactions as services, you note that you provide your clients reel-to-reel tapes, compact discs, DAT, hard disk, playlists, and consulting. You note that you lease tapes to FCC licensed radio stations and that the tapes contain copyrighted works. The lease of such tapes is a lease of tangible personal property. The lessee is liable for use tax measured by the sales price. [A], as a retailer engaged in business in California, is required to collect the use tax from the lessee and report and pay it to this Board. See Revenue and Taxation Code section 6203 which defines "retailer engaged in business in this state" to mean any retailer deriving rentals from a lease of tangible personal property situated in this state. We conclude that tax applies to your charges for leasing tangible personal property in this state.

Your letter indicates that some of your charge may be for professional services that are separate from your lease of tangible personal property. It is even possible that a large portion of your lease receipts may be exempt from use tax under the provisions of Sales and Use Tax Regulation 1527, Sound Recording, a copy of which is enclosed. Nevertheless, I understand that Mr. Zahm has repeatedly requested a detailed explanation of your charges and a detailed description of the tangible personal property which you provide to your client. Instead, your response consists generally of extensive arguments as to why you believe that you are not selling

tangible personal property but not much of a description of the specific tangible personal property which you provide to your clients.

In order to resolve this case, I am suggesting to Mr. Zahm by a copy of this letter that he conclude his audit with whatever information is available and, if warranted, issue a determination of any tax due. If you disagree with the determination, you may petition for a redetermination and request a hearing before a hearing officer.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

Enc.