

M e m o r a n d u m**375.0848**

To : Mr. Vic Anderson
Supervising Tax Auditor
Special Projects Team

Date: November 3, 2000

From : David H. Levine
Tax Counsel IV

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Subject: E---, Inc.
SR -- XX-XXXXXX

This is in response to your memorandum dated July 10, 2000 regarding video games. Senior Tax Counsel Ronald L. Dick had responded by letter dated July 2, 1998 on this subject, concluding that “although an interactive CD ROM program, such as the one [you] describe, or a video game may embody a qualified motion picture in part, the CD ROM program or video game is not itself then a ‘qualified motion picture’ for purposes of section 6010.6.” This has been our interpretation for some time, and remains the correct interpretation of section 6010.6.

The taxpayer’s request for us to revisit this matter is based on a statement in the backup to Business Taxes Law Guide Annotation 375.0847 (5/28/99). That opinion concerned whether a motion picture that was on a DVD nevertheless was a qualified motion picture. The underlying opinion in the affirmative referred to a recent Board case. However, not only was that case specific to the facts and not a decision of Board policy (e.g., there was no memorandum decision), but it was wholly unnecessary to the analysis.

A motion picture on a DVD is still primarily a motion picture even if it includes interactive technology in order to navigate that motion picture. A computer program video game is still a computer program, even if it includes portions of qualifying motion pictures. It is entirely possible that the computer program may qualify as a custom computer program, but a computer program, or a custom computer program, is not a qualified motion picture. To the extent that the annotation says otherwise, it is wrong.

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cc: Ms. Charlotte Paliani (MIC:92)
Mr. James C. Kuhl (MIC:40)