

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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March 1, 1990

Mr. A--- C. R---
A-- C. R--- P---
XXX --- ---
--- ---, CA XXXXX

SR -- XX-XXXXXX

Dear Mr. R---:

Your December 4, 1989 letter to the --- Office of the State Board of Equalization regarding the application of sales tax to your charges involved with the production of videotapes has been referred to the legal staff for reply.

You explained that you are an independent producer of industrial videotapes for sales and training purposes. You rent rather than purchase almost all of your equipment and hire freelance crews. You have reviewed the Board's proposed Sales and Use Tax Regulation 1529, dated September 1, 1989, and asked for confirmation of your understanding of the application of tax to the following transactions you noted. We assume that, as you pointed out, all of the motion pictures involved in the transactions are qualified motion pictures as defined in the proposed regulation. Where you list a series of transactions which call for the same application of tax, we have listed the transactions and provided the applicable response. The references to Regulation 1529 are to the proposed regulation. A copy of the latest draft is enclosed for your further information.

“Blank video and audio tape purchased from film and tape house for use in shooting and editing. We use tape for shooting and provide the tape to the post production house.

“Blank tape purchased from post house to be use by us in off line editing room which we rent from the post house. We do the editing rather than hire an editor from the post house.”

Tax applies to the sale of the blank video and audiotape to you. (Reg. 1529, subd. (a)(1).)

“Tape purchased through post house on which their editor records our edited programs.”

If the post-production house transfers tape to you which it has recorded or edited for your use in a production, the post-production house performs qualified production services. It is the consumer of the tape, and tax does not apply to its charge to you. (Reg. 1529, subd. (b)(2)(B)1.)

“Computer disks furnished by the post house to us containing graphics created by them for our production.”

We agree with your conclusion that , under subdivision (b)(2)(B)1. of the regulation, the furnishing of the computer-generated graphics is a nontaxable qualified production service.

“Dub tapes produced by the post house for B rolls, work prints, client approval prints and other dubs for any intermediate use on the qualified motion picture before the release print is made.”

Since the dub tapes are not release prints, the charge to you for the tapes is for a nontaxable qualified production service. (Reg. 1529, subd. (b)(2)(B)1.)

“Video equipment rented from the post house and used by our cinematographer to film our production.”

Generally, tax applies to the post-production house’s charge to you for the lease of the equipment unless the post-production house leases the equipment to you in substantially the same form as acquired as to which the post-production house has paid sales tax reimbursement or timely paid use tax measured by the purchase price. (Reg. 1660, subd. (c)(2).)

“Video equipment rented from the post house and used by their cinematographer to film our production.”

In this case, where the post-house retains possession of the equipment and uses it to film your production, the transaction is not a lease of the equipment. The charge to you is for a nontaxable qualified production service. (Reg. 1529, subd. (b)(6)(A).)

“Sets built or rented for the production such as a walls, kitchen furniture and props.”

In order to provide you with a specific answer to this transaction, we would need further explanation as to the specific property transferred to you. Enclosed is a copy of Sales and Use Tax Regulation 1521, Construction Contractors, which explains the application of tax to charges for the construction of improvements to real property. If you enter into a studio facilities contract with a studio which provides you the use of property, the application of tax is discussed at subdivision (b)(6)(B) of the regulation.

“Studio charges for rental of the studio shooting space, lighting rental, telephone, and the studio manager. Each listed separately on their invoice. Assume that the studio provides nothing towards the sets, props, or wardrobe.”

We agree with your conclusion that the only charge subject to tax in this transaction would be the charge for the rental of the lights. That charge would be nontaxable if it were for tax-paid property leased in substantially the same form as acquired as discussed above regarding the charge for rented video equipment.

“Rental charges for a set of semi-permanent nature such as a western town façade.

“Rental of permanent sets and actual locations like a house or a store.”

We would need further information as to what you mean by “semi-permanent set”. If the western town façade were real property, tax would not apply to the charge.

If, when you rent a permanent set, items of tangible personal property are included, the application of tax is as described at subdivision (b)(6)(B) of the regulation.

“Rental or purchase of props or wardrobes.”

Tax would apply to the sale to you of props or wardrobes. Tax would apply to the lease, unless the lease were of tax-paid property leased in substantially the same form as acquired.

“Purchase of still photographs to be used in the qualified motion picture.”

Tax would apply to the sale to you of still photographs which you use. You noted that tax would not apply if the seller paid tax on his purchase. We disagree. Tax would apply to the seller’s retail sale to you regardless that the seller purchases the photographs tax paid. In such case, the seller could take a tax-paid purchase resold deduction. See Sales and Use Tax Regulation 1701, “Tax-Paid Purchases Resold”.

“Charges for on line editing including tapes done by post production house on the production.

“Charges for the services of cinematographer, grip, gaffer, drivers.”

The charges for the editing and cinematography are for nontaxable qualified production services. The charges for grips, gaffers, and drivers are nontaxable, because those persons do not fabricate tangible personal property. Rather, their charge is for nontaxable services.

“Charges for make up artist hired for making up actors.

“Charges to us by the make up artist for supplies used in the production.”

Again, the charges for the labor of the make-up artists are nontaxable not because they qualify as qualified production services under the regulation. They are nontaxable because, by merely applying make-up, the make-up artist performs a service rather than a sale.

If the make-up artist does not apply make-up, but merely sells supplies to you, tax applies to the retail sale of the make-up artist's sale.

“Charges to us for storyboards.”

The Board has determined that charges for storyboards are nontaxable. (Reg. 1529, subd. (b)(2)(D)4.)

“Charges to us for paintings, models, or art work regardless of whether or not they are transferred to the customer.”

You noted that you believe this charge is nontaxable as a qualified production service. We disagree. The charges for paintings, models, or artwork are nontaxable only in those cases where they are transferred in connection with the performance of qualified production services, and the paintings, models, and artwork were used for filming special effects, titles, or credits. For example, if you purchase a model ship from a model builder, tax applies to the sale to you.

“Stock film shots purchased from a stock house for use in the production.”

We agree that tax does not apply to the charge. (Reg. 1529, subd. (b)(4)(A).)

“Charge to our client for producing the production, not including release prints or dubs beyond the first one provided to the client.”

As provided in Regulation 1529, when you produce a qualified motion picture for a client, you are the consumer of the tangible personal property which you consume in making the production. Tax does not apply to your charge to the client for the motion picture. Tax does apply to your charge for the release prints.

“Charge to our client for modifying a production which had been done previously.”

Under subdivision (b)(2) of the regulation, qualified production services includes the technological modification or alteration of a qualified motion picture. Your charge for modifying a production is nontaxable.

“Charges to us by the post or dub house for release dubs to be provided to the client.

“Charges to our clients for release dubs to be provided to them.”

You may issue a resale certificate to the vendor of the release prints when you purchase the release prints to sell to your client. Tax applies to your retail sale of the release prints or dubs to your client.

You noted that you understand that a multi-image slide show is not a qualified motion picture. You believe that you can purchase film and processing for resale, and the entire charge for the production is taxable. We agree that tax applies to your charge for a multi-image slide show which you produce for a client. You may purchase for resale only that film and processing of film which you actually sell to the client. Tax applies to the sale to you of film and processing of film which you use in producing the end products.

As you requested, we are enclosing copies of Sales and Use Tax Regulations 1501 and 1660.

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

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

Encs.