



STATE BOARD OF EQUALIZATION

To Mr. Glenn Bystrom

From Gary Jugum

Subject Non-Attorney Opinions

I have reviewed your memorandum of March 13, 1989 to Dottie Nardone
We are in agreement with his conclusion, as follows

Training Films. Training films are qualified motion pictures. 3/13/89



STATE BOARD OF EQUALIZATION

Telephone (916) 445-0387

March 13, 1989

Dear

Your January 25, 1989 letter to Mr. Joseph Cohen of our Hollywood office has been referred to me for reply. In your letter you asked if laboratory processing charges on surgical operation training films and aerospace manufacturer's films of their planes are subject to tax under Section 6010.6. You also asked if the reel and can on which the film is mounted is exempt from sales tax. Your business is a full service motion picture laboratory.

As provided in the enclosed copy of Section 6010.6, charges for "qualified production services" are nontaxable beginning September 22, 1988. "Qualified production services" are defined in Section 6010.6 as any fabrication performed by any person on film, tape or other audiovisual embodiment in connection with the production of all or any part of any "qualified motion picture." Qualified production services do not include services or other work to manufacture release prints or to duplicate tapes for exhibition or broadcast.

Further, "qualified motion picture" is defined in Section 6010.6 as any motion picture, whether or not completed, which is produced, adapted, or altered for exploitation in movie theaters, through television, in amusements parks, on commercial carriers, etc. for entertainment, commercial, advertising, promotional, industrial or educational purposes. As such, qualified motion pictures include training and educational films. However, qualified motion pictures do not include private non-commercial motion pictures such as weddings, graduations, etc.

Training films of surgical operations are qualified motion pictures under Section 6010.6. As such, your charges for processing these surgical films would be nontaxable qualified production services unless you are manufacturing release prints or duplicate tapes for exhibition. In other words, your charges for film prints that will be exhibited to students for training (release prints) are subject to tax, including the charge for the film, reel and can. However, if you process film that is used for an intermediate purpose (i.e. edit copy, daily, etc.) or if you perform intermediate services (i.e. editing, cutting, etc.) your entire charge will be nontaxable and you will be the consumer of any film used in performing this qualified production service.

With respect to your aerospace customers, there is not enough information in your letter to determine if these films are "qualified motion pictures" under Section 6010.6. However, I can provide you with some general guidelines concerning the application of tax.

If the film being processed is not a qualified motion picture or the film is a release print of a qualified motion picture, your charges will be subject to tax unless otherwise exempt (i.e. resale,

interstate commerce, U.S. Government, etc.). With respect to resales, if your customers are reselling these films to their customers or to the U.S. Government, these sales are exempt sales for resale. In such cases, your customer should provide you with a valid resale certificate as provided in the enclosed copy of Regulation 1668, "Resale Certificates."

If you perform qualified production services, as defined in Section 6010.6, your charges will be nontaxable. In addition, when providing qualified production services you are the consumer of any film used regardless of the fact that the film will be resold or shipped out-of-state, or that your customer is the U.S. Government. Qualified production services include the manufacture of the master or answer print for a qualified motion picture, but do not include charges for the manufacture of release prints or duplicate tapes for exhibition or broadcast.

With respect to film, reels and cans, tax applies to their sale unless they are transferred pursuant to a contract for qualified production services. If you transfer film, reels and cans under a qualified production services contract, you are the consumer of the film, reels and cans. As a consumer, you should pay tax reimbursement to your suppliers at the time of purchase or report use tax on the cost of these items if they were purchased without tax (i.e. for resale or from an out-of-state vendor).

In addition to Section 6010.6 and Regulation 1~68, I have enclosed copies of Regulation 1614, "Sales to the United States and Its Instrumentalities" and Regulation 1620, "Interstate and Foreign Commerce" for your reference.

I hope this information is helpful. If you have any additional questions, please let me know.

Sincerely,

Glenn A. Bystrom
Principal Tax Auditor

GAB:gjm

Enclosure: Section 6010.6
Regulation 1614
Regulation 1620
Regulation 1668

cc: Joseph Cohen - Hollywood District office
bc: Mr. Ron Dick
Mr. Jeff McGuire
Hollywood District office - For your files.
Exemption Letter File - with copy of incoming.