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**STATE BOARD OF EQUALIZATION**

January 3, 1968

We have completed our review of your petition for redetermination of sales and use taxes. We have concluded that the tax was properly applied to the light test film stock.

It appears to us that the only significant functional use of the property in question is to adjust or balance the lighting so that the most desirable release print may be produced. This utilization of the property occurs as a step or process in the production of other property which your firm contracted to produce for the customer. The film stock is not physically incorporated in the release prints or other property nor does it appear that it would be acquired by the customer for any independent purpose. Accordingly, it is our opinion that the tax applies under the provisions of sales and use taxes ruling 14 which provides in pertinent part as follows:

“(a) Tax applies to the sale of tangible personal property to persons who purchase it for the purpose of use in manufacturing, producing or processing tangible personal property and not for the purpose of physically incorporating it into the manufactured article to be sold.”

We do not agree that the customer's reservation of rights to exhibit the film demonstrates that the property is sold without use. This in no way prevents your firm from exercising the incidents of beneficial ownership by using the property for its intended purpose. Indeed, an express title provision would not alter the tax consequences because the film stock is not sold in the regular course of business without prior use being made thereof. (See Revenue and Taxation Code, §§ 6008, 6009.)

While you have indicated that the value of the light test film is included in the billing for the first trial composite, this likewise provides no basis for adjustment. The film stock is not physically incorporated in the first trial composite, and is, therefore, a separate property. The use tax applies to property purchased without payment of tax and withdrawn from inventory for use in producing other property (Revenue and Taxation Code, §§ 6094, 6202; sales and use taxes ruling 14). The tax has been held to be applicable even though a small and indeterminate portion of the property remained with other property delivered to the customer (American Distillery Company v. State Board of Equalization, 55 Cal.App.2d 799). To offset this use tax liability against sales taxes paid on the prints merely because the price of the prints included reimbursement for the cost of the film stock would be contrary to the provisions of Section 6012 of the Revenue and Taxation Code, which provides that the cost or expense of producing the property sold may not be deducted from gross receipts from the sale.

In view of the above, we have recommended that the tax on this item be redetermined without adjustment. Please review our letter and advise us, in view of what is set forth herein, if you still desire an oral hearing before the Board on your petition. If we do not hear from you within thirty days from the date of this letter, we shall assume that an oral hearing is no longer desired.

Very truly yours,

W. E. Burkett  
Tax Counsel

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