

Headquarters – Petitions (HL)

April 26, 1978

Tax Counsel (GJJ) – Headquarters

REDACTED TEXT

This is to advise you as to our opinion as to the proper application of the tax to certain charges regarded as taxable in the recent audit of the referenced taxpayer.

The question which was referred to this staff for review concerns the proper application of the tax to charges made for transcripts and copies of transcripts. Apparently taxpayer records and transcribes depositions upon oral examination for use in judicial proceedings and also records and transcribes hearings conducted before the Senate Rules Committee.

We note that taxpayer is not a “shorthand reporting corporation” as that term is defined by Business and Professions Code Section 8040 and that no corporation may in any manner represent that it is certified as a shorthand reporter unless it is properly registered under that section. (See B. & P. Code § 8018.)

Apparently you have taken the position that tax does not apply to the furnishing of an original transcript to the person contracting for production of the transcript but that tax applies to all additional copies furnished to that person and to all copies supplied to other persons.

Insofar as the recording and transcription of depositions for use in trial is concerned, we are of the opinion that the tax applies as follows:

Tax does not apply to original copies (and carbon copies made at the same time as the original) furnished to the party contracting for the performance of the service. Recording and transcribing a deposition constitutes a service. It is immaterial that additional carbon copies may be transferred so long as those carbon copies were made at the same time as the original. Tax applies to transfers of all other additional copies.

Tax does not apply to the first copy (carbon copy or photocopy) furnished to all other parties to the litigation. Code of Civil Procedure Section 2019 provides that upon payment of reasonable charges therefor any party to the litigation has a right to receive a copy of the deposition. Tax applies to all additional copies beyond the first copy, furnished to persons other than the person originally contracting with the reporter.

The interpretation herein made is consistent with Government Code Section 8211.5 which regulates fees charged for the service of transcribing a deposition. The section in question regulates charges for originals and copies made at the same time as the original. Section 8211.5 does not regulate charges made for photocopies.

Insofar as the recording and transcription of legislative hearings may be concerned, tax does not apply to charges made for an original transcript and carbon copies made at the same time as the original. Tax applies to charges for all additional copies.

Additional questions may be resolved upon preliminary hearing where there is a full opportunity to develop the factual basis of any disputed application of tax.

Attached are the audit working papers which were furnished to us by the district by its memorandum of December 23, 1977.

J:alicetilton
Attachment

cc: Sacramento – Auditing (CNW)