

Memorandum

515.0075

To: Mr. Donald J. Hennessy

Date: August 27, 1987

From: Ronald L. Dick

Subject: Video Depositions

Attached is a copy of my memorandum to the Audit Evaluation and Planning Unit regarding the application of sales tax to charges for the audiotaping and videotaping of depositions.

If you believe that the opinion should be annotated in the Business Taxes Law Guide, I suggest the following wording:

Videotaped and Audiotaped Depositions. Persons who make audiotaped or videotaped recordings of depositions in connection with litigation perform a service. Pursuant to Code of Civil Procedure section 2025, upon request of any party to the action, a party who records or causes the recording of the deposition testimony by audiotape or videotape, must furnish a copy of such tape to the other party on receipt of payment of the reasonable cost of making the copy of the tape. The application of the sales tax to charges for the videotapes or audiotapes is:

(1) Tax does not apply to the charge for the videotape or audiotape furnished to the party contracting for the performance of the service. Tax applies to sales of all additional copies to the party contracting for the service.

(2) Tax does not apply to the charge for the first videotape or audiotape furnished to other parties to the litigation. Tax applies to sales of all additional copies to such persons.

(3) Tax applies to all sales of videotapes or audiotapes to persons who are not parties to the litigation.

RLD:sr

cc: Mr. E. L. Sorensen, Jr.

Memorandum**515.0075**

To: Audit Evaluation and
Planning Unit (BSI)

Date: August 27, 1987

From: Legal (RLD)

Subject: Video Depositions

This is in reply to your July 16, 1987 memorandum regarding the application of sales tax to charges for the videotaping of depositions.

As you know, we issued an opinion on March 25, 1985 which concluded that charges for such a videotape would be subject to sales tax as a sale of tangible personal property and that such transfer would not qualify as a nontaxable transfer of a motion picture "production" under Sales and Use Tax Regulation 1529.

You have now received correspondence from Mr. REDACTED TEXT. Mr. REDACTED TEXT noted the recent passage of Assembly Bill No. 169 (Stats. 1986, Ch. 1334) which enacted, effective July 1, 1987, new provisions to the Code of Civil Procedure governing pretrial discovery in civil actions. Mr. REDACTED TEXT believes that transfers of videotaped depositions should not be subject to sales tax.

Since your earlier telephone conversation regarding Mr. REDACTED TEXT correspondence, we have had further discussions on this issue and, in light of Code of Civil Procedure section 2025, we are reconsidering our previous conclusion that transfers of videotaped depositions are subject to sales tax.

Notwithstanding that such a videotape does not have the necessary completeness to constitute a motion picture production, we believe that tax does not apply to the transfer. In substance, the videotape recordation of a deposition is a statutorily provided alternative method to the stenographic recording of the deponent's testimony. See Code of Civil Procedure section 2025, subdivisions (1) and (u). Depositions may also be recorded on audiotape under section 2025. We have previously taken the position that, generally stenographic reporting of depositions by private court reporters in connection with litigation is the performance of a service. See Business Taxes Law Guide Annotation 515.0070. Pursuant to the Code of Civil Procedure, a copy of the court reporter's transcript must be furnished to any party of the litigation. The application of sales tax to the charges by the court reporter is as follows:

- (1) Sales to the party contracting for the service. 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. Tax applies to transfers of all additional copies to the party contracting for the performance of the service.

(2) Sales to other parties to the litigation. Tax does not apply to the first copy (carbon copy or photo copy) furnished to other parties to the litigation. Tax applies to additional copies beyond the first copy furnished to such parties.

(3) Sales to persons not parties to the litigation. Tax applies to all copies sold to persons not parties to the litigation. (BTLG Annot. 515.0070.)

Similarly, any party who records or causes the recording of a deposition testimony by videotape or audiotape must furnish a copy of the videotape or audiotape to any party to the action on receipt of payment of the reasonable cost of making the copy. (Code of Civ. Proc. § 2025, subd. (p).)

In order to maintain a consistent approach to the application of tax to charges for recording testimony, we conclude that a person who videotapes or makes a sound recording on audiotape of a deposition in connection with litigation pursuant to Code of Civil Procedure section 2025 performs a service. Therefore, sales tax applies to the transfer of such tapes as follows:

(1) Tax does not apply to the charge for the videotape or audiotape furnished to the party contracting for the performance of the service. Tax applies to sales of all additional copies to the party contracting for the service.

(2) Tax does not apply to the charge for the first videotape or audiotape furnished to other parties to the litigation. Tax applies to sales of all additional copies to such persons.

(3) Tax applies to all sales of videotapes or audiotapes to persons who are not parties to the litigation.

Of course, any lease of a videotape (excluding, generally, rentals of videotapes for private use) is not a "sale" or "purchase" pursuant to Revenue and Taxation Code sections 6006(g)(1) and 6010(e)(1). Rather, the lessor of such videotapes is the consumer of such videotapes.

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

RLD:sr