



STATE OF CALIFORNIA

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**STATE BOARD OF EQUALIZATION**

916-445-5550

November 20, 1989

REDACTED TEXT

Dear REDACTED TEXT:

This is in response to your letter dated October 11, 1989 regarding the application of sales tax to sales of labels attached to video tapes. You state:

“The labels in question are sold to home video (Beta and VHS) lessors. These labels are self adhesive, gummed labels which are attached to and become a component part of the video cassettes. They are attached by the home video lessor prior to leasing the videos to the general public.

“These labels fall into two categories.

“Labels in the first category are commonly referred to as 'tamper-guard labels'. These labels are constructed of a material which does not allow the labels to be removed and reapplied. They are placed on the seam of the video container. Examples of these labels can be seen on Attachment A.

“They perform the following functions:

- "1. They always identify the video lessor by name.
- "2. They usually give the video lessors address and telephone number.
- "3. They always give a warning not to tamper with the plastic container which holds the video (magnetic) tape.
- "4. They provide a security for the lessor in that they inform him if the magnetic tape has been replaced with a copy.

“To be candid with you, one concern which I have is that you will find these labels are used in a taxable manner as security devices prior to leasing the videos. I believe that this does not constitutes a taxable use prior to the leases. The labels are intended to act as name plates and keep the lessee from tampering with the tapes while they are being leased. the security aspect of the labels can be favorably compared to a burglar alarm which is installed on an automobile prior to the car being placed in rental inventory.

“Labels in the second category are made of a material which would, at least in theory, allow them to be removed and replaced. Examples of these labels can be seen on Attachment B.

“They perform the following functions:

“1. They give the lessee information as to the lease terms, directions on how to store the video, or the type of movie on the tape.

“We are not certain if all the video lessors have sellers permits with the Board. We are aware that sales for resale to unpermitted retailers may be difficult to support as exempts.”

Tax does not apply to sales of tangible personal property to persons who purchase that property for the purpose of incorporating it into an article to be sold. (Reg. 1525(b).) The lease of video cassettes for private use under which the lessee does not obtain or acquire the right to license, broadcast, exhibit, or reproduce the video cassette is a sale for purposes of sales and use tax. (Rev. & Tax. Code § 6006(g)(7).) Items incorporated into video cassettes so as to become an ingredient or component part of those video cassettes may be purchased for resale when the video cassette will be used only to lease them in transactions which are sales under this definition.

We believe that both of these labels may be purchased by lessors for resale when the labels will be attached to video cassettes that will be used only for leases which constitute sales. In effect, the lessor will be selling (leasing) video cassettes that are tamper proof by virtue of one type of label and carry other information by virtue of the other label. That the lessor prefers to sell tamper-proof video cassettes as opposed to unprotected video cassettes does not alter our conclusion that the labels may be purchased for resale.

You also ask if our answer would differ for sales to lessors holding seller's permits as opposed to lessors not holding such permits. Our conclusion would not change; however, as you note, it will be more difficult for your client to establish that its sales are for resale with respect to its sales for which it fails to take in good faith timely resale certificates showing valid seller's permit numbers. For example, if a purchaser uses the video cassettes to which the labels are attached prior to leasing them, your client would be regarded as having made retail sales of those labels to that purchaser. Nevertheless, if your client carries its burden of showing that the labels were attached to video cassettes that were then leased, without other use, in the manner described in Revenue and Taxation Code Section 6006(g)(7), your client would be regarded as having made sales that were not at retail even if those sales were made to purchasers not holding seller's permits.

As you know, since you have identified your client, this opinion does not constitute advice upon which your client may rely within the provisions of Revenue and Taxation Code Section 6596. If you have further questions, feel free to write again.

Sincerely,

David H. Levine  
Tax Counsel

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bc: Sacramento District Administrator