

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
(916) 445-6450

July 12, 1989

Ms. E--- K---  
Accounts Receivable  
M--- M--- S--- Services  
XXX North --- Avenue  
---, CA XXXXX

Dear Ms. K---:

Your May 3, 1989 letter to Assistant Chief Counsel Gary Jugum has been referred to me for reply.

You noted that you are a post production sound studio for film and video. Your major type of work is on commercials. You noted that you believe that, in light of the addition of section 6010.6 to the Revenue and Taxation Code effective September 22, 1988, tax does not apply to your charges to a client for the following:

“POST PRODUCTION MIXING (STUDIO TIME):

“AUDIO TRANSFERS:

From one sound element to another:

For mixing or editing purposes:

“FILM TO TAPE TRANSFERS: (NON-AIR)

35mm to 3/4" & 1/2" cassette:

35mm to 1" C:

(Used for our clients to obtain an okay from their clients)

“VIDEOTAPE TO VIDEOTAPE:

3/4" & 1/2" to 3/4":

(Used for editing or client approval)

“VIDEOTAPE LAYBACKS: (NON-AIR)

To 3/4" & 1/2" cassettes:

(Used for our clients to obtain an okay from their clients)

To 1" C masters and safety masters:

(Used to make dubs for air)”

We agree that, under section 6010.6, tax does not apply to your charges when you perform such work on a qualified motion picture. We believe that such work qualifies as "qualified production services" as defined in section 6010.6 at subdivision (b)(4). When you perform qualified production services, you are the consumer of film, tape and other embodiment upon which your sound, visual images, or computer-generated graphics are created or recorded. Tax applies to the sale to you of such property, and tax does not apply to your transfer of the property to your client incidental to your performance of the qualified production services.

You noted that you are uncertain as to the application of tax to your charge for a transfer of a videotape to another videotape for a client who wishes to have its work on a cassette for in-house use or possible promotion at a later date. Qualified production services do not include work to manufacture release prints or to duplicate tapes for exhibition or broadcast. As you noted, you do not know what use the client will make of the tape.

Under section 6010.6, the Producer's Exemption Certificate provided in Sales and Use Tax Regulation 1529 is not applicable to transactions occurring on and after September 22, 1988. If you prepare and transfer to a client a duplicate of a motion picture film or videotape, and the duplicate is of a quality suitable for exhibition or broadcast, you should consider the transfer as a sale subject to sales tax unless otherwise notified by the client. Generally, statements on your invoice which indicate that the services you provide are qualified production services as defined in section 6010.6 will be sufficient to establish for audit purposes that your charges are nontaxable. As further evidence, purchase orders you receive from your customers describing your services would also substantiate the nontaxability of your charges.

You noted that you believe that all of the work listed above which you perform on a student film is subject to tax. We agree. It is our opinion that student films are not qualified motion pictures as defined in section 6010.6, subdivision (b)(3).

We hope this answers your questions: however, if you need further information, feel free to write directly to me. We are sending a copy of your letter to the --- District office of the Board for an answer to your question as to how you should handle instance where you may have incorrectly applied tax transactions occurring after September 27, 1988.

Very truly yours,

Ronald L. Dick  
Tax Counsel

RLD:sr  
Encl.

cc: --- District Administrator  
bn: Mr. Joe Cohen: Please ask someone to contact Ms. K--- and explain how you like her to handle her situation as to the first paragraph on page 2.