



STATE BOARD OF EQUALIZATION

September 5, 1996

Re:

Account No.

Dear

This is in reply to your letter dated July 10, 1996, in which you request clarification of the application of Sales and Use Tax Regulation 1529 as it applies to television commercials. You state:

" ... We produce television commercials for clients and the only tangible product that the client receives is the video tape. These tapes are also distributed to the television stations. Our understanding of Reg. 1529 is that the time incurred on the production is not taxable. We believe that if we use two separate job numbers, one for the production, and one for the actual tape, that the only job that would be taxable would be the job with the costs of the tape.

"...

"In addition to this matter, we also request a determination letter informing us of the correct procedure in collecting sales tax on the production of radio commercials and print ads."

Section 6051 of the Revenue and Taxation Code imposes the sales tax on retailers for the privilege of selling tangible personal property at retail in this state. The measure of tax is the gross receipts from the retail sales in this state of tangible personal property. A retail sale means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. (Rev. & Tax. Code § 6007.) The term "sale" means and includes any transfer of title or possession, in any manner or by any means whatsoever, of tangible personal property for a consideration. (Rev. & Tax. §§ 6006(a).) It is the retailer's responsibility to pay sales tax; however, the retailer may, by agreement, collect sales tax reimbursement from the purchaser. (Civ. Code § 1656.1)

Revenue and Taxation Code section 6010.6 excludes from the definition of sale any transfer of all or any part of any qualified motion picture when the transfer is made prior to the date the qualified motion picture is exhibited or broadcast to its general audience.

Sales and Use Tax Regulation 1529 implements and explains Revenue and Taxation Code section 6010.6. Subparagraph (b) (1) provides that a "qualified motion picture" is any motion picture which is produced for exploitation in, on, or through any medium or by any device for any purpose, including, but not limited to, any entertainment, commercial, advertising, promotional, industrial, or educational purpose (with exceptions not relevant here).

The transfer of the final production of a commercial on video tape to your client is the transfer of a qualified motion picture because it is a commercial produced, adapted or altered for exploitation through a medium for the purpose of advertisement. Since your transfer of a qualified motion picture is not a "sale," you are the consumer of the materials that you use for the production of that qualified motion picture. Hence, tax applies to the sale to you of the video tape or other materials which you use to produce the qualified motion picture including the videotape you transfer to your client. Tax does not apply to any of your charges to the client for the qualified motion picture.

When a contract calls for production or transfer of a qualified motion picture and requires delivery of more than one release print, the first film or tape which is suitable for exhibition will be considered the principal release print. As above, you are the consumer of, and tax applies to the sale to you of, that principal release print. (Sales and Use Tax Regulation 1529(b) (3) (B).) For example, if you take your materials to a lab that produces videotapes and the lab makes 100 videotapes that contain the qualified motion picture, the sale of the first videotape by the lab to you is taxable since you are the consumer of that one videotape. You may purchase the remaining 99 videotapes for resale since your transfer of duplicates (release prints) of those video tapes are sales subject to sales tax. (Sales and Use Tax Regulation 1529(b) (3) (A).) Sales tax applies to your retail sale of the 99 videotapes to your client.

To reiterate, when you transfer the principal print of the television commercial, all your charges for the production of that tape are not taxable, nor is your transfer of that principal print. On the other hand, when you transfer release prints to television stations, such transfers are sales subject to tax, and you may purchase those videotapes for resale.

Your method of assigning job numbers will not affect whether a specific transaction is subject to tax.

The sale of master tapes or records is partially exempt from tax. (Rev. & Tax. Code § 6362.5(a).) The measure of tax with respect to the retail sale of master tapes or records embodying sound is limited to the sale of the unprocessed media. (Sales and Use Tax Reg. 1527(b) (2), a copy of which is enclosed.) The term "master tape" includes tapes or records which are produced for use in radio commercials or other advertising. (Sales and Use Tax Reg. 1527(b) (1).) Tax applies to subsequent retail sales of master tapes in the same manner as tax applies to the original retail sale. (Sales and Use Tax Reg. 1527(b) (2).) For example, an advertising agency produces a radio commercial by writing copy, hiring talent, arranging for studio time and acquiring the master tape. Duplicates of the master are sent to stations throughout California. Under Regulation 1527 the measure of tax on the charges related to the production of master tapes would be the sales price of the blank tape; however, tax applies to the total gross receipts received from the sale of the duplicates. (Bus. Taxes L. Guide Annot. 527.1000, 4/4/88.) Thus, you would pay sales tax on

the sale price of the tape before being used for recording; however, you would pay sales tax on your sales of the copies of the tape that you send to radio stations measured by the full amount you charge your client.

Tax does not apply when copy is furnished to media in manuscript form. (Sales and Use Tax Reg. 1540(b) (4) (E).) Therefore, sales tax does not apply to your transfer of copy only for radio commercials.

We cannot respond to your general question in regard to "print ads" since you have not provided any facts regarding those sales. We are enclosing, for your information, copies of Sales and Use Tax Regulations 1540, 1541, and 1541.5. These regulations cover different areas related to the sale of printed advertising. In addition, we are enclosing a copy of Pamphlet No. 38, "Tax Tips for Advertising Agencies." We are also enclosing a copy of Sales and Use Tax Regulation 1527 which covers the sale of recordings.

If you have any further questions in regard to the matters contained herein, please do not hesitate to write again. If you do so, please provide facts specific to each transaction.

Very truly yours,

A handwritten signature in cursive script that reads "Anthony I. Picciano".

Anthony I. Picciano
Tax Counsel

AIP:cl

Enclosures (Regs. 1527, 1540, 1541, 1541.5, Pamphlet No.38.)
cc: --- District Administrator