



STATE BOARD OF EQUALIZATION

July 9, 1971

Mr. T--- W. D---
XXXX --- ---
--- ---, California XXXXX

SR -- XX XXXXXXX

Dear Mr. D---:

This is with reference to your petition for redetermination and the hearing held on the matter last June 14 in Pasadena.

You may recall that the primary area of protest was the assessment of tax on receipts from "stringer" photography. At the hearing Mr. C--- pointed out that the audited determination included receipts from sales of raw film stock as well as payments for "stringer" photography made to you by G--- W---B--- and others.

A review of the audit work papers reveals that receipts from "stringer" photography during 1966 and through 1969 (there were none in 1970) amounted to \$3,625. Receipts from the sales of raw film stock in 1968 and 1969 amounted to \$5,449. There was no evidence of sales of raw film stock in 1966 and 1967 or in 1970.

At the hearing we explained that the sales of raw film stock were sufficient in number to preclude any finding that they could be deemed to be exempt occasional sales. Also, we pointed out that since you paid no sales tax reimbursement to anyone on the acquisition of the film stock you were not entitled to any tax paid purchase resold credit when you sold the film to others. Thus, as to the \$5,449 there is no legal basis for recommending any adjustment.

"Stringer" photography is a term you used at the hearing to describe the situation where a television might furnish you with raw film stock for the purpose of taking movies of newsworthy events. If the station used what you exposed they would pay you for it. If they chose not to use it you got nothing. The station processed the film and they edited it. All you did, as an independent contractor, was to go out on location and shoot the action.

A sale under Section 6006 means and includes the producing, fabricating and processing of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating or processing. It is our opinion that the act of exposing the film to the news action is a form of fabricating. It is a step in the process of producing motion film for showing on television. The final work, including the processing and editing was done by the consumer, which was the television studio.

There is no statutory exemption for sales of exposed raw film to persons who will use the film to convey news to the public. Likewise, there is no statutory exemption from tax on charges for exposing the film. As pointed out above, it is our opinion that exposing the film is a form of fabrication and under Section 6006 is a sale even if the film is furnished by the customer-consumer. Under the circumstances, we have no basis for recommending any adjustment to the portion of the determination representing tax on receipts from "stringer" photography.

There was a penalty asserted for failure to file returns. This is statutory and arises by operation of law if, in fact, returns should have been filed. As indicated, it is our opinion that returns should have been filed so the assertion of the penalty was proper. Relief from the penalty can only be given by the Board and before they can consider the question of relief you must petition for sale pursuant to the provisions of the second paragraph of Section 6592 of the Revenue and Taxation Code. That paragraph reads:

"Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he bases his claim for relief."

If you file such a statement, it must be signed under penalty of perjury. There is no need to make a personal appearance before the Board at the time action is taken on the petition for relief of the penalty.

We note that you have asked to have your petition heard by the Board, and this you are entitled to under the Sales and Use Tax Law. However, as indicated, we propose to recommend that the petition be denied. If, after considering our recommendation and the reasons for it, you no longer wish a hearing before the Board on the issues discussed above, please execute and return two of the three waiver forms enclosed. The third is for your files.

Very truly yours,

Robert H. Anderson
Tax Counsel

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Enclosures