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January 7, 1993

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Mr. D--- J. V---  
 D--- V---  
 XXX --- ---  
 ---, CA XXXXX

SR -- XX-XXXXXX

Dear Mr. V---:

This is in reply to your December 15, 1992 letter regarding the application of sales tax to your charges for videotapes.

You explained that you are a videographer. Typically you make wedding videotapes. One of your customers asked you for proof that sales tax applies to your charge. You asked whether you must charge sales tax on your charges for "(1) Wedding Videos, Birthday Video, etc, (2) Editing Someone's Home Video, (3) Duplicating A Customer's Video." We assume that the customer's video to which you refer is for private, noncommercial use.

Generally, California sales tax is imposed upon all retailers at the applicable rate of the gross receipts from the sale of all tangible personal property sold at retail in this state. (Rev. & Tax. Code § 6051.) Whether or not the retailer collects reimbursement for the tax from the customer is a matter of contract between the retailer and the customer. (Civ. Code § 1656.1.)

Revenue and Taxation Code section 6006 defines "sale" to mean and include any transfer of title or possession, in any manner or by any means whatsoever, of tangible personal property for a consideration. When you provide a videotape to a customer, your charge is subject to sales tax. Subdivision (b) of section 6006 further defines sale to include the producing, fabricating, or processing of tangible personal property for a consideration for consumers who furnish, either directly or indirectly, the materials used. Therefore, if you perform videophotography for a client, your charge is subject to sales tax even if the client were to provide the videotape and camera.

As you noted, Sales and Use Tax Regulation 1529, Motion Pictures, provides that certain charges are nontaxable when the charge is for the transfer of a "qualified motion picture" or for "qualified production services" performed in connection with the production of a qualified motion picture. Those provisions result from Revenue and Taxation Code section 6010.6 which excludes such transactions from the definition of "sale" for purposes of the Sales and Use Tax Law. Subdivision (b)(3) of section 6010.6 specifically provides that the term "qualified motion picture" does not include motion pictures produced for private noncommercial use, such as weddings or graduations. In this regard, Regulation 1529 provides at subdivision (b)(1)(B):

"Qualified motion picture does not include motion pictures produced for private noncommercial use, such as motion pictures of weddings or graduations to be used as family mementos, accident reconstruction videotapes to be used for legal analysis, or student films to be used for class projects."

You are correct in your conclusion that, since the videotapes you produce are not qualified motion pictures, sales tax applies to your charges for the videotapes. Tax applies to your charges for editing home videos, and tax applies to your charges for duplicating a customer's video.

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

Very truly yours,

Ronald L. Dick  
Senior Tax Counsel

RLD:sr