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August 31, 1992

Ms. B--- H---
H--- I---, Inc.
P. O. Box XXXX
---, CA XXXXX

Dear Ms. H---:

This is in reply to your July 6, 1992 letter regarding the application of sales tax to your charges for videotapes under the following facts:

“H--- I---, Inc is a film and video production company. Ninety-nine percent of our work is providing corporate clients with training video production services while one percent involves video duplication.

“Our procedure for providing corporate training production are:

1. Client comes to us with an idea for video tape.
2. H--- I--- produces: Script, Scenes Tapes and the Master Tape which is the final program.
3. The Client owns all materials used in the production of their product.
4. Their final product is used in house as a training or safety aid for their employees and is not offered for sale.

“Most of our clients take their program master and have duplications made on an as needed basis. Occasionally a client may request 5 or fewer duplications from H--- I--- to be delivered with the final master. To date this year we have had no requests for duplications.

“When duplications are requested we purchase tape from retail outlets and pay the appropriated sales tax.”

Enclosed is a copy of Sales and Use Tax Regulation 1529, Motion Pictures, as amended September 22, 1988. As provided in subdivision (b), when you produce a film or videotape which is a "qualified motion picture," tax does not apply to your charge to the client. Rather, you are the consumer of, and tax applies to the sale to you of, tangible personal property which you use in making the qualified motion picture, including the raw stock which you process to transfer to the client as the completed film or videotape.

You note that the "Client owns all materials used in the production of their product." If you mean that you purchase the materials and sell them to clients prior to your using the materials, then you are the retailer of such materials and tax applies to your sale of the materials to the client.

Not all films and videotapes are qualified motion pictures. When you produce a motion picture film or videotape for a private noncommercial use, such as a film or videotape of a wedding or graduation, you are the retailer of, and tax applies to the total gross receipts of, your sale of the finished videotape to your client.

Also, when you provide duplications for your clients to use as release prints, tax applies to your sale of the duplications. See Regulation 1529, subdivisions (b)(3) and (d)(II).

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

Enc.