

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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(916) 445-6450

January 10, 1989

Ms. P--- H---
Accounting Supervisor
S---, Inc.
XXX --- Street
--- ---, CA XXXXX

SR -- XX-XXXXXX

Dear Ms. H---:

This is in reply to your September 30, 1989 letter regarding the application of sales tax to charges made by S---, Inc. in light of recently enacted Senate Bill 1405, which added section 6010.6 to the Revenue and Taxation Code.

You noted that S--- is in the business of providing videotape production equipment and labor, videotape post-production services (e.g., film to tape transfers), and videotape stock to clients in the motion picture, television, commercial, industrial, and advertising businesses. Given this information, you asked the following questions:

- “Are we to impose and collect sales tax on:
- a. Telecine (film-to-tape transfer services).
 - b. Production services where both equipment and labor are rented by our client.
 - c. Production services where only equipment is rented and videotape stock is purchased by our client.
 - d. Duplication services where a videotape is copied onto another videotape without changing the content thereon (e.g. tape editing).
 - e. Editing services whereby the content of a videotape is changed by direction of our client.”

Under section 6010.6, “sale” and “purchase” do not include the performance of any qualified production services in connection with the production of a qualified motion picture. The term “qualified production services” generally means any fabrication performed by a person on film, tape, or other audiovisual embodiment in connection with the production of all or part of a

qualified motion picture. Accordingly, sales tax does not apply to your charge for film-to-tape transfer services, editing, and other post-production services you perform on motion pictures. You are the consumer of videotape stock you use in performing qualified production services. On the other hand, if your duplication services results in your manufacturing release prints or duplicate tapes for exhibition or broadcast, sales tax does apply to your retail sale of such tapes.

Generally, when you contract to perform qualified production services, you do not thereby rent out equipment; rather, you use the equipment in performing the services. You should pay sales tax reimbursement or timely pay use tax on your purchase of that equipment. Under situation "c" above, we assume that you do not provide an operator. In such case, if you have paid tax on your purchase of the equipment and rent the equipment out in substantially the same form as you acquired it, tax does not apply to your rental receipts. Tax only applies to your sale of videotape stock in that event.

"2. May we choose to use the valid State of California Seller's Permit No. Resale card as a basis for non-collection of state sales tax?"

No, since you are not selling tangible personal property when you perform qualified production services, you should not accept resale certificates from your customers when you perform post-production services. You may accept resale certificates from customers to whom you sell release prints and duplicate tapes for exhibition or broadcast for resale.

"3. Is the Producer Exemption Certificate as stipulated in Regulation 1529(c)(2)(L) still in force? If so, under what conditions? For example, must we attach a certificate to each and every job. Please be specific."

The Producer Exemption Certificate provided at Regulation 1529, subdivision (c)(2)(L), is no longer applicable. Rather, you should be able to provide evidence to the Board's audit staff that the nontaxable charges you make are for providing qualified production services to producers of qualified motion pictures.

"4. Is subcontracted work taxable?"

We assume that you are asking whether tax applies to your charge for qualified production services you perform for another studio rather than directly for the producer. No, your charges for qualified production services are nontaxable when you perform these services on a qualified motion picture regardless whether you provide these services to the producer of the motion picture or to another studio who is under contract with the producer.

"5. Does Senate Bill 1405 completely or partially take the place of Regulation 1529? Please specify which parts and paragraphs of 1529 are still applicable."

As a result of Senate Bill 1405, Sales and Use Tax Regulation 1529, Motion Pictures, is being substantially revised. The revisions are rather substantial and must go through a series of reviews; therefore, we cannot specify at this time which parts will or will not be amended. Of course, the special employee provisions at subdivision (c)(2) are no longer applicable. By a copy of this letter, we are asking that your name be placed on the list of persons interested in receiving information as to the amendments to the regulation.

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

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD:sr