

**STATE BOARD OF EQUALIZATION**

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January 18, 2002

F--- H---, Curator
A--- F--- A---
XXX --- --- Blvd.
--- ---, CA XXXXX

**Re: Request for Legal Opinion
Regulation 1532**

Dear Mr. H---:

This is in response to your letter dated October 19, 2001, addressed to Program Policy Specialist James Kuhl regarding the application of the teleproduction and postproduction partial sales and use tax exemption set forth in Revenue and Taxation Code section 6378 to your company's operations.

You state:

"I work at a non-profit film institution where our activities include management of visual and audio assets, restoration, preservation, and archiving of film and video elements, creation of database files, and other 'postproduction services' . . .

"Most of the standard equipment used in post production and film preservation is pretty easy to identify (film splicers, flatbed editors, video duplicators, etc.); however, some of the equipment we use is not that easy to categorize. For instance, an important part of our work in film preservation is the proper storage of film elements and tape masters in archival containers and temperature controlled vaults. Most people generally think of 'media preservation' as repair and restoration of original film and video elements – but this is really just the first step in the preservation process. Only proper storage in approved archival containers and controlled environmental conditions will insure a preservation element's future availability.

“The reason I contacted your office last week is because there appears to be some confusion with the equipment manufacturers over which products are considered ‘equipment used for post production and preservation’ as defined in the Regulation. I was recently informed by one of our vendors that according to section (c)(6)(A), archival film containers are not included for tax exemption in Regulation 1532 since they are considered ‘equipment used to store products.’ While it’s true that some of these same containers could be used to store products to be sold, this is not the case in the film preservation field. Preserved film masters and tape elements are not ‘products’ to be resold (as with commercially available DVDs or videotapes), but rather are ‘assets’ that must be archived in proper storage conditions in order to preserve them for future use.

“ . . . It seems a bit inconsistent with the purpose of Regulation 1532 that this type of material would not be included in the tax exemption, since as I’ve outlined above, archival containers and storage media are just as integral to preservation and postproduction activity as film splicers and video transfer equipment. This would also encourage archival institutions such as ours to purchase storage equipment and supplies from California-based companies rather than outside vendors, which is the original intention of the Regulation. . . .”

We understand you to ask whether your purchases of archival film containers and supplies such as film cans, film cores, videotape cases and audiotape cases qualify for the partial exemption.

DISCUSSION

As a starting point, California imposes a sales tax on the gross receipts from the retail sale of tangible personal property inside the state unless an exemption or exclusion otherwise applies. (Rev. & Tax. Code § 6051.) Although this tax is imposed on the retailer, the retailer may collect tax reimbursement (usually itemized on the invoice as “sales tax”) from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1; Reg. 1700(a).) When sales tax does not apply, use tax is imposed on the sales price of tangible personal property purchased from any retailer for storage, use or other consumption in this state, unless that use is specifically exempt by statute. (Rev. & Tax. Code §§ 6201, 6401.) This tax is imposed on the person actually storing, using or otherwise consuming the property. (Rev. & Tax. Code § 6202.)

Revenue and Taxation Code section 6378, as explained by Regulation 1532, provides a partial exemption from tax on the gross receipts or sales price from the sale or use of certain tangible personal property used primarily in providing teleproduction or other postproduction services (hereafter “partial exemption”). This partial exemption is generally available to persons that are primarily engaged in teleproduction or other postproduction activities as described in Code 512191 of the North American Industry Classification System (“NAICS”) Manual. (Rev. & Tax. Code § 6378(c)(2); Reg. 1532(c)(2).) Those activities generally include processes such as film or video editing; film and tape transfers; subtitling; credits; closed captioning;

special effects; or animation. (Rev. & Tax. Code § 6378(c)(3); Reg. 1532(c)(4).) Those activities also include management of visual or audio assets and related files stored as data; film, video or audio restoration and preservation; archiving; film cleaning; and creation of data files related to a service described herein. (Reg. 1532(c)(4)(C).) A non-profit establishment is “primarily” engaged in teleproduction or other postproduction activities when 50 percent or more of the funds allocated to the establishment are attributable to teleproduction or other postproduction services. (Reg. 1532(c)(2)(A).)

We assume that the non-profit film institution (hereafter “A---”) you work for is engaged in a line of business described in Code 512191 of the NAICS Manual and that 50 percent or more of the funds allocated to the A--- are attributable to teleproduction or other postproduction services. We further assume that the film cans, film cores, videotape cases and audiotape cases are purchased by the A--- for its own use and not as inventory intended for resale. In other words, we assume that the A--- uses the cans, cores and cases to store film and tape they own. We note that you have not provided us with an exemplar of the film cans, film cores, videotape cases and audiotape cases or specifications with respect to these items unique components and special characteristics, if any. In that regard, we have made certain assumptions to facilitate our response. If any of our assumptions are incorrect, then the tax consequences may be different from those explained in this letter, and you should write to us again providing further facts.

Tangible personal property used in conjunction with teleproduction or other postproduction activities is defined in Regulation 1532(c)(5) and generally includes machinery and equipment, including component parts (e.g., duplication equipment); equipment or devices used or required to operate, control, regulate, or maintain the machinery (e.g., electronic data storage equipment); and, materials (as defined in Regulation 1521). Tangible personal property does not include furniture, inventory, or equipment used to store products. (Rev. & Tax. Code § 6378(c)(5); Reg. 1532(c)(6)(A).) We assume that the film cans, film cores, videotape cases and audiotape cases purchased by the A--- are similar to a container, bucket or bracket which serve as a receptacle for holding, carrying or storing items such as film, videotape and audiotape. As noted above, tangible personal property includes information stored on electronic media such as film, videotape and audiotape, i.e., electronic data storage equipment. (Reg. 1532(c)(5)(B).) However, tangible personal property does not include cans, cores and cases as such items are considered equipment used to store products. (Reg. 1532(c)(6)(A).) While we appreciate that the proper storage of film elements and tape masters is an important part of your work in preservation and archival, items such as cans, cores and cases are not directly involved in the process of preserving or archiving, nor are they the products (e.g., film, tape or other multimedia format) that result from such a process. The cans, cores and cases are used in a step beyond the process of preserving or archiving as their purpose is to store the products resulting from the process. Such items do not qualify as tangible personal property used primarily in teleproduction or postproduction within the meaning of Revenue and Taxation Code section 6378. Consequently, the partial exemption does not apply to the retail sale of film cans, film cores, videotape cases, and audiotape cases to the A---.

Lastly, you state that the A--- will purchase its storage equipment from out-of-state vendors if the sale of storage containers by California vendors to the A--- is not subject to the partial exemption. As noted above, where sales tax does not apply, such as when the sale takes place outside the state, use tax is imposed on the sales price of property purchased from a retailer for the storage, use, or other consumption of property inside this state. (Rev. & Tax. Code §§ 6201, 6401.) This tax is imposed on the person actually storing, using, or otherwise consuming the property. (Rev. & Tax. Code § 6202.) A retailer engaged in business inside this state is required to collect this tax from its customers and remit it to this Board. (Rev. & Tax. Code §§ 6202, 6203.) This means that tax still applies to property that the A--- purchases outside California for use in this state. Where the A--- purchases property outside California for use in this state from a retailer engaged in business in California, the out-of-state retailer is responsible to collect use tax from your company. Where the A--- purchases property outside California for use in this state from a retailer not engaged in business in California, the A--- remains obligated to self-report any applicable use tax on such property.

I hope this answers your question. If you have any further questions, please write again.

Sincerely,

Trecia M. Nienow
Tax Counsel

TMN/ef

cc: Mr. James Kuhl (MIC: 50)
Mr. Larry Bergkamp (MIC:44)
Mr. Steven Gray (MIC:44)
--- --- District Administrator (--)