



STATE BOARD OF EQUALIZATION

September 15, 1995

Re: Sales and Use Tax Reg. 1529

Dear

This is in response to your letter of February 21, 1994, regarding the application of sales tax to your charges for producing a video series.

You describe your transaction as follows:

"I have been hired as a producer of a video series, by my client, --- ---- ---. During the course of production, I have paid sales tax on all consumables such as tape stock or other tangible property. I have not paid tax on services performed by persons in connection with the production who do not produce tangible property such as directors, lighting technicians, etc.

"The video series as well as all the videotapes used in the creation of the series, are the copyrighted property of my client. I am not involved in any duplication or sale of the finished video series. I am producing the master tapes, window dubs edited masters, and safety masters only. My client will be solely responsible for duplicating and distributing the series. The series is not intended at this time for broadcast."

Section 6051 of the Revenue and Taxation Code imposes the sales tax on retailers for the privilege of selling tangible personal property at retail in this state. The measure of tax is the gross receipts from the retail sales in this state of tangible personal property. The term "sale" means any transfer of title or possession of tangible personal property for consideration. (Rev & Tax. Code § 6006(a).)

The term "sale" does not include the performance of any "qualified production services" in connection with the production of all or any part of any qualified motion picture. Persons performing those qualified production services are consumers of the embodiment upon which visual images are created and recorded, notwithstanding that the title to the property may be transferred pursuant to the qualified production services contract. (Rev. & Tax. Code § 6010.6(a) (1).) The term "sale" also does not include any transfer of all or any part of any qualified motion

picture when the transfer is made prior to the date the qualified motion picture is exhibited or broadcast to its general audience (Rev. & Tax. Code § 6010.6 (a) (2) .)

Sales and Use Tax Regulation 1529 implements and explains Revenue and Taxation Code section 6010.6 and defines a "qualified motion picture" in subparagraph (b) (1) as any motion picture or portion thereof, whether finished or not, which is produced, adapted, or altered for exploitation in, on, or through any medium or by any device for any purpose. A qualified motion picture includes a television show or spot. (Reg. 1529(b) (1) (A)1.)

A qualified motion picture does not include motion pictures produced for private noncommercial use such as motion pictures of weddings, or accident reconstruction videotapes for use in legal analysis. Our conclusion below is based on the assumption that the video series you transfer to the --- is a qualified motion picture as defined above.

Your transfer of the qualified motion picture to --- --- --- is not a "sale" and is, therefore, not subject to sales tax. Rather, you are the consumer of the tangible personal property such as tape stock and equipment you use in producing the video series. Thus, you are correct that it is the sale of such property to you that is subject to tax. Your client's sales of release prints of the video series in this state would be subject to sales tax. (Reg. 1529(b) (3).)

If you have any further questions in regard to this matter, please do not hesitate to write.

Sincerely,

Anthony I. Picciano
Staff Counsel

AIP:es

Ene.: Sales and Use Tax Regulation 1529 cc: Oakland District Office (CH)

Voices of the Earth

Berkeley, CA 94703

February 21, 1994

State Board of Equalization 2101 Webster
Suite 210
P.O. Box 27
Oakland, CA 94604-0027

Dear State Board of Equalization:

Last fall I had a conversation with a member of your staff asking for a ruling on whether sales tax should be charged in my particular situation. I was sent a copy of regulation 1529, however, was also told that I would receive a ruling in writing regarding whether or not sales tax was to be charged by company for the video series we are producing. Unfortunately, I have not received a written ruling to date, and am asking again for a decision. My contract with my client requires providing written proof of your ruling.

I have been hired as a producer of a video series, by my client, The Gauntlett Group. During the course of production, I have paid sales tax on all consumables such as tape stock or other tangible property. I have not paid tax on services performed by persons in connection with the production who do not produce tangible property such as directors, lighting technicians, etc ..

The video series as well as all the videotapes used in the creation of the series, are the copyrighted property of my client. I am not involved in any duplication or sale of the finished video series. I am producing the master tapes, window dubs edited masters, and safety masters only. My client will be solely responsible for duplicating and distributing the series. The series is not intended at this time for broadcast.

It is my understanding that under these circumstances, I am not to charge sales tax to The Gauntlett Group, but that they must charge tax to their clients when selling the distribution copies. Please notify me in writing as to the correctness of these conclusions. If you have any questions, please call my office at 510-486-1626.

Cordially,

Robin Acker
Producer