



STATE BOARD OF EQUALIZATION

July 26, 1995

Re: Sales and Use Tax Regulation 1529

Dear Mr.

This is response to your letter of March 6, 1995, regarding the application of sales tax to your charges under Sales and Use Tax Regulation 1529, motion pictures. You describe two hypothetical situations with questions as follows:

"(1) Assume that I am hired-as a freelance individual-by a motion picture producer to generate a special effects shot. I quote him a price, then hire Vendor A to perform the work, which results in a piece of film negative (the effects shot) that I then turn over to the producer for incorporation in his motion picture. The producer pays me, and I pay Vendor A. I retain a fraction of what the producer pays me as my fee.

- Does Vendor A have to charge me sales tax? Why or why not?
- Do I have to charge the producer sales tax? If so, on what portion of the total transaction? Why or why not?·
- Does either the vendor's or my work constitute a 'qualified production service?'
- Is either the vendor or I considered a 'special employee'?"

"(2) Assume that the same producer hires me to generate an effects shot. I strike a deal with Vendor A to do the work, but this time the producer pays Vendor A directly, and pays me a separate consultation fee.

- Does sales tax apply in the transaction between producer and Vendor A?
- Does sales tax apply to my service to the producer?"

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. §§ 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. and Tax. Code § 6010.6(a) (1).)

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. "Qualified production services" is defined in Regulation 1529 in subparagraph (b) (2) as any fabrication performed by any person in any capacity (including but not limited to, an employee, agent, or independent contractor) on film, tape, 'or other audio visual embodiment in connection with the production of all or any part of any qualified motion picture. Subparagraph (b) (2) (A) of Regulation 1529 provides that tax does not apply to charges for qualified production services. Subparagraph (b) (2) (B) provides the tax does not apply to the charge for tangible personal property transferred in connection with the performance of qualified production services. A person who performs qualified production services is the consumer of, and tax applies to the sale to that person of tangible personal property used in the performance of the services.

In your first hypothetical, you state that you hire Vendor A to perform work which results in a film negative the images of which are then incorporated into a motion picture. I assume that the motion picture is produced, adapted or altered for exploitation through any medium such that it is a qualified motion picture. When Vendor A, creates and transfers to you the film negative embodying the special effects shot, Vendor A performs qualified production services. Sales tax does not apply to Vendor A's charge to you. Vendor A is the consumer of the property utilized in the performance of that service. Sales of tangible personal property to Vendor A to use in the performance of the service are taxable.

You ask whether Vendor A should charge you sales tax reimbursement. Since Vendor A is performing qualified production services, its transfer of tangible personal property in connection with those services is not taxable. Further, tax does not apply to your transfer of the film negative to the producer because you, through the contract provide qualified production services to the producer for its use in the production of a qualified motion picture.

There is no longer a definition of a "special employee" in Sales and Use Tax Regulation 1529. Sales and Use Tax Regulation 1529 was amended operative September 22, 1988, and deleted provisions relating to work performed by special employees.

In your second hypothetical you ask us to assume that the producer hires you to generate the effects shot. You then contract with Vendor A to do the work, and the producer pays Vendor A directly paying you a separate consultation fee. The analysis and end result of this transaction is

no different than the foregoing hypothetical. Vendor A is still providing qualified production services. Vendor A is the consumer of the tangible personal property utilized in the performance of those services. Sales tax does not apply to your charge to the producer since sales tax is imposed on the sale of tangible personal property and you are not selling any tangible personal property.

If you have any further questions in regard to the matters contained herein, please do not hesitate to write.

Sincerely,

Anthony I. Picciano
Staff Counsel

Enc.: Reg. 1529