

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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July 12, 1989

Mr. J--- B. M--- III
President
P--- B---
XXXX North --- --- Avenue
--- ---, CA XXXXX

Re: SR -- XX-XXXXXX

Dear Mr. M--- III:

This is in reply to your May 16, 1989 letter regarding the application of tax to your charges for dubbing videotapes for clients.

You asked specifically whether tax applies to charges for master dubs, protection dubs, viewing dubs, and archive dubs or only to charges for dubs which will be aired. We assume that the dubs to which you refer are duplicate copies of a videotape.

Enclosed is a copy of proposed Sales and Use Tax Regulation 1529, Motion Pictures, which is scheduled for public hearing and which represents the Board's staff's view of the application of tax to charges in connection with the production and transfer of motion pictures.

Tax does not apply to your charge for dubs you transfer in connection with your performance of qualified production services. We consider that master dubs, protection dubs, viewing dubs, archive dubs, and other such tapes that are not for exhibition or broadcast are the product of the performance of qualified production services. Accordingly, tax does not apply to your charge for such dubs. You are the consumer of, and tax applies to the sale to you of, tangible personal property which you use in making such dubs. (Proposed Reg. 1529, subd. (d)(10)(B) at page 26.)

The manufacture and sale of release prints for exhibition of broadcast is not the performance of qualified production services. (Proposed Reg. 1529, subd. (b)(3) at page 21.) Therefore, tax applies to your sale of dubs that your client purchases for the purpose of exhibition or broadcast.

If you prepare and transfer to a client a dub which is of a quality suitable for exhibition or broadcast, you should consider the transfer as a sale subject to sales tax unless otherwise notified by the client. Generally, statements on your invoice which indicate that the services you provide are qualified production services as defined in section 6010.6 will be sufficient to establish for audit purposes that your charges are nontaxable. As further evidence, purchase orders you receive from your customers describing your services would also substantiate the nontaxability of your charges.

You noted that you understand that tax does not apply to your other services. Nontaxable qualified production services include only fabrication on film, tape, or other audiovisual embodiment in connection with the production of all or any part of a "qualified motion picture" as defined in the regulation. Such work performed on motion pictures for private noncommercial use is subject to tax. (Proposed Reg. 1529, subd. (b)(1)(B) at page 18.)

The copy of your February 28, 1989 letter you sent indicates that one of your business activities is "graphics". Assuming that your transfer of graphics is on videotape, your charge would be nontaxable as the performance of a qualified production service. Further, tax does not apply to your transfer of paintings and other graphic art used by you in filming special effects, titles, or credits when the transfer is in connection with your performance of qualified production services. (Rev. & Tax. Code § 6010.6, subd. (a)(1).) Generally, however, your other contracts to provide a client with graphics, such as artwork on paper, are subject to tax.

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

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD:sr
Encl.

bc: --- District Administrator