


STATE BOARD OF EQUALIZATION

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April 19, 1993

Mr. S--- W---
XXXXX --- ---, Suite XXX
---, CA XXXXX

Dear Mr. W---:

Your January 20, 1993 letter to the Culver City District Office of the State Board of Equalization has been referred to the Board's legal staff for reply.

You posed the following questions and asked for our opinion as to the application of sales tax to the transactions. We assume that, in each of the situations you present, the producer sells the motion picture in this state and that, when the persons you describe as "A" and "B" have subtitles added to the motion picture, the work is performed in this state.

"Example 1:

Company A has purchased the rights to distribute a qualified motion picture, which has been broadcast in theatres within the U.S., from the producer of the picture and transfers the right to Company B, which adds Spanish subtitles to the picture to broadcast the picture in the Spanish language. Company B plans to distribute the qualified motion picture with subtitles to local broadcasters...."

As you know, Revenue and Taxation Code section 6010.6, subdivision (a)(2), provides that: "sale" and "purchase" do not include any transfer of all or any part of any qualified motion picture, or any interest therein or any rights relating thereto, when the transfer is made prior to the date that the qualified motion picture is exhibited or broadcast to its general audience. You believe that the transfer you describe should be nontaxable, because the general audience would be the Hispanic community to whom the picture has not been broadcast. We disagree. We believe that the "general audience" to which section 6010.6 refers is the general audience for whom the picture was originally produced. Otherwise, we believe subdivision (a)(2) of the section would be rendered meaningless, because each successive transfer of a picture would be nontaxable, since each transfer would be for exhibition or broadcast to a new general audience. However, our opinion is that the charges for adding subtitles are nontaxable as charges for "qualified production services."

Under the facts you provide, we believe the transfer from the producer to Company A would be a sale of tangible personal property. The producer's sale would be subject to sales tax as a retail sale unless Company A transfers the picture to Company B prior to making any use of the picture (e.g., making a copy of the picture). If A does transfer to B prior to making any use of the picture, the sale from the producer to A is a sale for resale, and the taxable retail sale is A's sale to B.

“Example 2:

If the producer of the qualified motion picture, which has been broadcast to theatres in the U.S. and other English speaking countries, transfers the right to broadcast the picture to Company A with the limitation that Company A add Spanish subtitles and broadcast only to Spanish-speaking audiences, would the transfer to Company A be subject to sales tax? Does it make any difference whether or not such a limitation exists?”

Yes, we believe the transfer is subject to sales tax. We do not believe the existence of the limitation makes a difference.

“Example 3:

Should Company A, with the limitation that it add Spanish subtitles and broadcast only to Spanish-speaking audiences as in example 2 above, transfer the right to broadcast the subtitled picture to distributors or broadcasters in Spain, would either the transfer from the producer to company A or the transfer from company A to the distributors or broadcasters be subject to sales tax?”

The transfer of the film to A in California is subject to sales tax where A purchases the film to add subtitles and copies it for distribution.

If A purchases the release prints in this state, the sale of the release prints to A is a retail sale. See section 6010.6, subdivision (c)(2).

“Example 4:

If Company A received the right to broadcast a qualified motion picture being shown in the U.S. from the producer of the motion picture, with the limitation that the film be shown only outside the U.S., would either the transfer of the motion picture or the right to broadcast the picture from the producer to Company A or the transfer from Company A to broadcasters and distributors in the foreign countries to which the picture was sent be subject to sales tax?

“Even without an imposed limitation from the producer that the film be shown only outside the U.S., if Company A only transferred the motion picture or the right to broadcast the picture to distributors and broadcasters in Spain, would the transfer from the producer or the transfer to the distributors or broadcasters be subject to sales tax?”

The application of tax remains the same regardless of the limitation imposed by the producer.

“Example 5:

Using the same facts as example 1, if Company A transferred the right to broadcast the qualified motion picture to Japanese broadcasters in Japan, would the transfer to Company A by the producer of the motion picture or the transfer of the motion picture to Company B or the broadcasters in Japan be liable for sales tax?”

The application of tax remains the same.

“Example 6:

Using the same facts as Example 1; Company B plans to distribute the subtitled copy of the qualified motion picture to broadcasters in Spain rather than to domestic Hispanic audiences. The qualified motion picture has yet to be broadcast in Spain (the general of audience of the subtitled picture), and the subtitled picture as (sic) never been broadcast. Would sales tax be incurred in the transfer of the right to broadcast in Spanish at the time the right is sold from Company A to Company B?”

The application of tax remains the same.

“Example 7:

If Company A were to directly transfer the right to broadcast in the Spanish language to broadcasters in Spain, who would add subtitles to the picture, and the picture had not yet been broadcast in Spain, would the transfer from Company A to broadcasters in Spain involve sales tax?”

If Company A were to sell the picture and ship the picture to Spain in accordance with Sales and Use Tax Regulation 1620, without adding subtitles, making copies of the picture, or making any other use of the picture, the sale to A is a nontaxable sale for resale. A's sale of the picture to the broadcaster in Spain is exempt from tax.

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

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr