



STATE BOARD OF EQUALIZATION

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Executive Director

May 13, 1996

Mr. R--- E. Z---
President
Z--- P---, Inc.
XXXX --- Avenue #XX
--- ---, CA XXXXX

Dear Mr. Z---:

Your April 4, 1996 letter to Mr. Travis Fullwood regarding the application of sales tax to your charges for videos has been referred to the Board's legal staff for reply. You provided the following facts:

"Z--- P--- Inc. has been a California Corporation since 19XX. We are a small communications company developing communications media. In the early 80's, ZPI was issued a SR number. However, the state cancelled it stating that it was not needed.

"We provide production and post production services to clients. In addition, we produce commercial videos, educational videos, promotional videos and personal celebration (weddings, etc) videos. Our production includes 'complete production' which includes shooting, editing and duplication of the videotapes services."

California imposes the sales tax on all retailers at the applicable rate of the gross receipts from the sale of all tangible personal property sold at retail in this state. (Rev. & Tax. Code § 6051.) Revenue and Taxation Code section 6006 defines "sale" generally to mean and include any transfer of tangible personal property for a consideration. Section 6010.6 excluded from the definition of "sale" (1) the performance of any "qualified production services" in connection with the production of all or any part of any "qualified motion picture," and (2) any transfer of all or any part of any qualified motion picture when the transfer is made prior to the date that the qualified motion picture is exhibited or broadcast to its general audience. As you know, Sales and Use Tax Regulation 1529, Motion Pictures, provides the State Board of Equalization's interpretation of section 6010.6. Subdivision (b)(1) of Regulation 1529 defines "qualified motion picture":

“(1) A ‘qualified motion picture’ is 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, including, but not limited to, any entertainment, commercial, advertising, promotional, industrial, or educational purpose.

“(A) Qualified motion picture includes, but is not limited to:

“1. Motion pictures produced for display at theaters, amusement parks or on commercial carriers; television shows including closed circuit and broadcast; commercials; trailers; television spots; specials; featurettes; ‘promos’; video press kits; music videos; and special effects, titles, and credits which are embodied on film, tape, or other motion picture media.

“2. Original and adapted versions including, but not limited to, adaptation to another language or another medium.

“3. Motion pictures produced for the federal government or its instrumentalities, foreign governments, state and local governments, or political subdivisions thereof.

“(B) Qualified motion picture does not include motion pictures produced for private noncommercial use, such as motion pictures of weddings or graduations to be used as family mementos, accident reconstruction videotapes to be used for legal analysis, or student films to be used for class projects.”

Based solely on the information you provided, it appears that the commercial videos, education videos, and promotional video which you produce are “qualified motion pictures” as defined in Regulation 1529. In that case, tax does not apply to your transfer of the initial videotape you produce for your clients. Rather, you are the consumer of, and tax applies to the sale to you of, tangible personal property which you use in producing the videotape including the blank tape you purchase from your vendor and transfer to your client. (Reg. 1529, subd. (a)(1) and (b)(3).) Tax does apply to your sale of duplicate copies. (Reg. 1529, subd. (b)(3).) On the other hand, unless there are facts of which we are unaware, the videotapes you describe as “personal celebration (weddings, etc.) videos” are not qualified motion pictures. Sales tax applies to your sales of those videotapes.

When you perform production and post production work to clients in connection with the client’s production of all or any part of a qualified motion picture, tax does not apply to your charge, because you perform “qualified production services” as defined at Regulation 1529, subdivision (b)(2). On the other hand, if you perform production and post production work for clients in connection with the production of a motion picture or videotape produced for private noncommercial use, tax applies to your charge regardless of whether you or the client provides the materials upon which you perform the work. (Rev. & Tax. Code § 6006, subd. (b).)

As is the case when you transfer nontaxable qualified motion pictures to your clients, when you perform qualified production services, you are the consumer of, and tax applies to the transfer to you of, the tangible personal property which you use in performing the services.

We hope this answers your questions; however, if you need further information, feel free to contact me directly.

Very truly yours,

Ronald L. Dick
Senior Staff Counsel

RLD:sr