



STATE BOARD OF EQUALIZATION

December 4, 1969

Attention:

Gentlemen:

This is with reference to your petition for redetermination of sales and use taxes. This matter was reviewed at a preliminary hearing held in --- --- ---.

We have concluded that petitioner does not qualify as a co-producer of the television series --
- --- --- Business Taxes General Bulletin 61-4 provides the following definition of a co-producer:

"Any person who, in respect to the making of a production, contributes property, literary material, personnel services or financing, has a right to share in the receipts or profits of the production, and shares significantly in the responsibility of producing a production. Examples of what constitutes such a sharing are:

“(1) Responsibility for preparation or furnishing, or the right to approve, the final script, budget, principal members of the cast, director 9 other personnel, place of production, music or title or the production.

“(2) The right to require retakes of scenes or sequences, to cut, recut, edit, re-edit or reassemble the production, to change the title of the production, to determine disputes on matters relating to production, or to take over supervision and control of production under certain circumstances.

"A producer who does not qualify as a co-producer under the foregoing definition may be referred to herein as an independent producer."

By the terms of the definition the co-producer classification is limited to persons who contribute property or services, have the right to participate in the production's profits, and have significant contractual responsibility with respect to the production of the motion picture (see paragraphs (1) and (2) for quoted examples). Participation in the production as a principal is required in order for the co-producer to be classified as the consumer and user of the property utilized in the production. This requirement is not satisfied by the derivative right to receive dividends or exercise stockholder control over the activities of a producer corporation.

Petitioner did not contribute property or services. It did not have any right to receive any portion of the proceeds nor did it have any contractual responsibility for the production of the television series. Its participation was limited to providing the joint venture the facilities and services ordinarily provided to an independent producer as part of a standard facilities agreement.

The fact that petitioner had an "equity interest" in the joint venture by reason of the parent corporation's 50 percent stock ownership in ---, provides no basis for adjustment. Commonly owned corporations frequently make sales to each other. For sales and use tax purposes such transactions are generally afforded the same treatment as transactions carried out between strangers. This is required because ownership of capitol stock in one corporation by another does not, itself, create an identity of corporate interest between the two companies, nor render the stockholding company the owner of the property of the other, nor create the relationship or principal and agent, representative, or alter ego between the two (Northwestern Pacific Railroad Co. v. State Board of Equalization, 21 Cal.2d 524, 531).

The corporations did not constitute a group or combination acting as a unit and therefore a single person for sales and use tax purposes because they were separate corporate persons carrying on separate and distinct business activities. In the instant case the different "real or ultimate" ownership interests of the stockholder of --- Inc., constituted a good business reason for carrying on business in the separate corporate form. The existence of the right to assign performance of any portion of the facilities contract to a corporate affiliate does not alter our conclusion.

The ruling issued by Associate Tax Counsel John H. Knowles in connection with the prior --- matter is not regarded as controlling. This ruling was based primarily upon a determination that the corporation was merely created to act as an agent to carry out joint ventures production agreement. This is indicated by the following statements setting forth in tax counsel's report:

"The corporation was formed for the purposes of producing the one series, and was disbanded afterwards. It had a net loss for the period of its operation. The loss was absorbed by the taxpayer and Roncom Productions.

"It is clear that the newly-formed corporation was made up only to serve the purposes of the parties which contracted to make the productions.

"The fact that the corporation was only a means of effectuating the purposes of the contracting parties in producing a television series is shown from the fact that the parties made up the loss or the corporate entity rather than letting it become insolvent, and disbanded it following production."

For the reason stated above the joint venture is not regarded as the agent of petitioner or of any of the other corporate affiliates.

It would not appear that the tax treatment afforded the ---, series was based upon this ruling because the production contract was executed in March of 1965 whereas the ruling was not issued until August or 1966.

For the reasons set forth above we have recommended that the petition for redetermination be denied. If you do not agree with the action recommended and desire to have the petition considered by the full board at an oral hearing please advise us in writing within 15 days of the date of this letter.

Very truly yours,

W. E. Burkett
Tax Counsel

WEB:kc

bcc: Los Angeles District
Van Nuys

- District Administrator
- Subdistrict Administrator - Attached are two copies of hearing officer's report --- which has been approved.
The hearing was held in ---