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**STATE BOARD OF EQUALIZATION**

September 29, 1964

Dear Mr. ---

This is in reply to your letter of September 9 in which you inquire about the taxability of your client's purchases of motion picture film.

As we understand the facts, your client's customer furnishes the script, direction, etc., but your client purchases the raw negative, does the camera work, and sends the film to the laboratory for processing. The lab sends its bill to your client, who, in turn, sends the processed film to his customer. The customer edits and completes the production. Your client charges for his time on an hourly or a contracted rate basis and adds the cost of the film and the cost of the lab work plus a markup on both. Your client's customer is actually billed by your client for one lump sum, and sales tax is charged on the full amount of the bill.

In order to explain the distinction between producers and independent contractors, we are inclosing copies of ruling 19 and Business Taxes General Bulletin 61-4. The primary point contained in them for this discussion is that producers (and co-producers) are considered to be consumers of all film and other tangible personal property used in the production of motion pictures, and the tax applies to the sale to producers. This means that persons who sell film and other tangible personal property to producers are not themselves consuming the property but are making a retail sale and should pay the sales tax on that sale. Accordingly, purchases of such property to be resold in the regular course of business to a producer are nontaxable sales for resale, and any purchases for such purpose may be made under a resale certificate if the purchaser for resale holds a valid seller's permit.

If a person is an independent contractor within the meaning of the bulletin, it means he is not a producer. Your client's method of charging for his services and the fact that he does not share in the receipts or profits of the production would make it appear that he is not a co-producer but is an independent contractor.

If, as is likely, your client's customer is the producer within the meaning of the bulletin, then he is the consumer; and your client is properly charging him sales tax on all the tangible personal

property sold to him. Your client may purchase such property ex tax under a resale certificate. If he does not do so, he may take a tax-paid purchase resold deduction on his quarterly return.

If you have any further questions, please do not hesitate to write to us again.

Very Truly Yours,

E. H. Stetson  
Tax Counsel

By \_\_\_\_\_  
Philip R. Dougherty

PRD: lar  
Enclosures

cc: San Jose – District Administrator