



STATE BOARD OF EQUALIZATION

April- 24, 1969

Los Angeles, CA 90017

Dear Frank:

After thoroughly reviewing the question raised in your letter of January 20, 1969, I am persuaded that your position is correct, i.e., that under ruling 19 the transfer by a producer of a motion picture, including the negative, the print, and all rights connected with the picture, prior to exhibition, is not a sale for sales and use tax purposes, whether or not the picture is produced under a contract with a sponsor.

I have discovered very little precedent in our files one way or the other regarding the precise issue. Sales Tax General Bulletin 50-9 indicated that a transfer of a motion picture by a producer prior to exhibition was not a sale for sales and use tax purposes. A contrary result was reached in a letter of June 4, 1956, a copy of which is enclosed. In that letter it was stated that if the motion picture were sold in interstate commerce, the sale would be exempt. Subsequently, however, we apparently returned to the principle indicated in bulletin 50-9, as evidenced by the enclosed letter dated March 27, 1962. This letter, which was sent shortly after Business Taxes General Bulletin 61-4 was issued, appears to confirm the view that bulletin 61-4 'was not intended to treat outright transfers of unexhibited motion pictures by producers as sales for tax purposes, whether or not the pictures were produced under contracts with sponsors.

Ruling 19 itself and the reason for its adoption seem to compel the conclusion which you advocate and which Ed Stetson reached in his letter to you of June 25, 1968. One of the principal reasons for adopting the ruling, as stated in Hr. Ryan's letter of February 27, 1957, to Mr. Thomson, was to prevent the loss of revenue which could occur if producers purchased the components of motion pictures under resale certificates and sold the completed pictures in interstate commerce. Consistently with that consideration, ruling 19 provides in part that "producers of motion pictures are consumers of all film and other tangible personal property used in production, and tax applies to sales to producers of such property." Both the literal language of the ruling and the reason behind it militate against a conclusion that the outright transfer or a

motion picture by a producer prior to exhibition is a sale for tax purposes. In view of the language and purpose of the ruling, the question of whether or not the picture was produced under a contract seems irrelevant •.

In conclusion, I agree with you that if we intend to tax transfers of the kind in question, the intent should be carried out through amendment of ruling 19.

Very truly yours,

T. P. Putnam
Tax Counsel

TPP:kc

Enclosures

cc: R. H. Anderson. - w/attach.
Gary J. Jugum – w/attach
Mr. John H. Murray – w/ attach.
Mr. J. T. Quick - w/attach.