



STATE BOARD OF EQUALIZATION

March 22, 1965

To: Los Angeles Dist. - Auditing
From: Tax Counsel (RHA)
Subject: Taxability of a Charge for the Developing of Dupe Negatives

On Monday of this week Messrs. Denny, Stetson and I discussed the question of tax on charges for developing dupe negatives generally and with regard to "X" corporation.

As to "X", we concur in the suggestion that inasmuch as a refund was given for tax paid on such charges pursuant to a prior audit and since they were led to believe that such charges were exempt, they should not be held liable for the tax in the present audit.

It is our opinion, however, that charges for developing dupe negatives were intended to be taxable when bulletin 61-4 was issued in 1961. We support this conclusion with reference to subparagraph (8) of paragraph 3 in the bulletin which lists the taxable charges for film and processing. Under taxable charges certain items are listed. It should be noted that where tangible personal property is involved, it is designated "raw stock".

Other items listed presumably refer to processing charges. However, there may be some ambiguity in the use of the term "negative stock", if it is listed to mean charges for processing negative stock since processing could be construed to include developing. On the other hand, processing a dupe negative would necessarily include exposing the film.

If "negative stock" refers to "film" it may be that the term is nothing more than another way of describing "negative-picture (raw stock)."

The term may mean a charge for exposing raw film to a fine grain positive film which is technically a form of photography done with equipment that is more machine than camera. The person who does the work is not considered a cameraman within the meaning of the term as it is commonly used.

Dupe negative, as listed, must mean charges for processing or fabricating otherwise it would have been labeled, dupe negative stock or dupe negative (raw stock). There are many grades and speeds of negative film stock some of which probably would not be suitable for producing dupe negatives, but no matter how a negative film may be described, the fact remains, it is still

negative and developing a negative doesn't become something else simply because it has a descriptive designation after it is developed.

It is my understanding that as a general practice, the studio laboratory fabricates the dupe negative from start to finish. That is, with their equipment the raw stock negative is exposed to a fine grain positive (which the lab may not have developed). The exposed film is then developed. Where the studio does the entire job, it is fabricating a dupe negative. In a way, this is comparable to copying or re-recording. It is different from work performed by a cameraman who exposes raw stock negative film which is subsequently developed into an "original negative". Generally, it is the latter type of developing that is expressly exempted under paragraph (b) of ruling 23 which, incidentally, is incorporated into bulletin 61-4 by reference.

It should be noted that under ruling 23, the exemption of developing charges seems to presuppose that the exposed raw film is furnished to the developer. In the case of developing a dupe negative furnished to a studio who does nothing more than develop it, the charges for the developing should be treated the same as any other negative developing charge under ruling 23.

By analogy, if someone were to furnish a studio with a glossy still print and contract them to make a negative from the glossy, I would say the entire charge should be taxable including the developing since the studio would be fabricating a negative. Technically, a negative so produced would be a duplicate negative. On the other hand, if a person furnished film which he had exposed by photographing of a glossy print and then contracted the studio to develop it, the charge for developing, if separately stated, should be exempt as per ruling 23. In other words, it should not matter what subject was used to expose the raw film negative. The test should be whether the developer also took the picture. If he did both he is fabricating a negative.

I was informed by a film studio technician in San Francisco that customers furnishing exposed raw film, which when developed is a dupe negative, is the exception rather than the rule since exposing raw film to a fine grain positive requires special equipment. Generally, the lab that does the exposing takes care of the developing too.

As far as use of the terms "dupe negative", "picture-negative (raw stock)", "negative film", etc., is concerned, it seems to me that the problem is one of semantics, and it could be that herein lies the confusion.

We suggest that you confer with industry officials and see if there is any misunderstanding or what their understanding is.

The foregoing does not reverse opinions in the memo of February 27, 1964 to "Y" or the letter of March 2, 1964 to "z" since the application of tax where dupe negatives are concerned presupposes that the studio lab doing the developing also exposed the film.

RHA: spg [lb]