



STATE BOARD OF EQUALIZATION

July 2, 1953

Gentlemen:

This is in reply to your letter of March 29 in which you take the position that your client, --- --- ---, is not required to hold a seller's permit for either of the two operations described in your letter.

We are unable to agree with your position with respect to the transactions described in the third paragraph of your letter which paragraph is numbered 1. As we understand it, your client is paid for exposing raw motion picture film negatives supplied by another studio or producer. Sales and Use Tax Ruling 19, Motion Pictures, copy enclosed, provides that producers of motion pictures are regarded as the consumers of all of the tangible personal property which is used in production. A production is a complete motion picture involving continuity, direction, story, or an explanation of an idea or process. It appears that your client is not producing as complete motion picture but is performing part of the processing of a complete motion picture which is being produced by your client's customer. We, therefore, are of the opinion that your client's charges, whether they be for exposing for films or other types of processing, are properly subject to the sales tax.

We are totally unable to agree with your contention that the sales tax does not apply to gross receipts from a "sale" as defined in Section 6006 (c) of the Sales and Use Tax Law. The District Court of Appeal has held, in *Banken v. State Board of Equalization*, 79 Cal. App. 2d 572, the tax to apply to charges for processing operations for consumers. The basis of the holding is the definition set forth in Section 6006 (c).

However, with respect to the second category of work performed by your client as described by you, it is our opinion that your client is the consumer of the tangible personal property which it uses in this operation which appears to constitute the production of a complete motion picture. Accordingly, your client's charges are not subject to the tax. Our position is that the animated cartoon commercials are complete motion pictures within the meaning of Ruling 19.

Your letter states "the advertising agency contracts with Bemiller Productions to produce an animated cartoon commercial for the client of the agency. --- --- --- receives an agreed fee for its services in producing the commercial. Bemiller Productions pays a sales tax upon the purchase by it

of all supplies and materials used in its production of the animated cartoon film. All necessary art work is done by --- --- --- Productions and is then photographed by it on motion picture film negative, which negative becomes the property of the advertising agency or its client. Said exposed negative is the only property to which title will be transferred”.

We presume that the finished film turned over by your client to the agency meets the test of a complete motion picture which, as we have indicated, must be a complete picture prepared for showing on screens or through television, either theatrical, or for commercial, advertising, or educational purposes, and includes all prints made of such production. It must be complete in itself, involving continuity, direction, story, or the explanation of an idea or process, as distinguished from “trailers”, “stock shots”, or other pictures constituting a portion only of a complete production. The “running time” of the picture is immaterial as is the size of the film.

If you have any questions as to whether the pictures in question meet these requirements, it is suggested that you give us a more complete description of the type of films produced by your client.

You mention that a small portion of the foregoing category of transactions is not completed and that there is no transfer of title or possession of any materials, but that a minimum fee is received for the incomplete work. In the absence of any transfer of title to the uncompleted work there would be no sales tax with respect to the fee received.

Yours very truly,

E. H. Stetson
Tax Counsel

EHS: ph

CC: Los Angeles – Review (PER)