



STATE BOARD OF EQUALIZATION

April 20, 1965

Gentlemen:

This is with reference to your letter of April 1 regarding Ruling 19, Motion Pictures. We will answer your questions in the order they were stated in your letter.

1. You first question relates to sales of prints to customers for whom you have produced a motion picture. The contract, in part, quoted by you, reads:

“The Producer will retain the original printing material in Trust and the Client will purchase all additional prints from the Producer at a fair market price. This price is currently \$____ a foot. All film and print material belongs to the Client outright and upon demand will be turned over to the Client.”

The foregoing is not a firm order for prints because it lacks certainty. It merely says the client will buy prints at a fair market price from the producer (if he buys any at all). He is not obligated to buy any. A firm order should specify the exact number of prints to be purchased and the price to be paid therefore, or other terms of payment.

2. Updating a production, you say, would consist of adding new scenes in the visual and/or changes in the sound track. This is not a new production. The changes are being made to an already existing production of which you were, apparently, the producer. Thus, changes when made by the producer are more in the nature of modification and the producer would still be the consumer. His status would not change as far as the production on which he is working is concerned. If you were not the producer of the film being updated you would not be the consumer of the changes either. Thus, if your client gave you a film to be updated, tax would apply to charges for updating since the updating work, in and of itself, is not a production.

3. Foreign language sound tracks if done by or contracted to be done by the producer of the film should be treated the same as updating done by the producer. In other words, the producer is the consumer and he pays tax on charges to him for any sound work, etc., he subcontracts to be done and the charges to the client are not subject to tax. If the order calls for a specified number of prints containing the foreign language sound track, the application of tax would be the same as an initial contract to produce a film and supply a specified number of prints. On the other hand, if the client furnishes the film and contracts to have you do a foreign language sound track and you were not the producer of the film, charges by you to the client would not be subject to tax since the sound track, in and of itself, is not a production.

4. Sales tax is applicable to charges by the producer of a film for retail sales of reels, boxes and cans. The measure of the tax is the total price charged to the client including handling charges.

Where you are the producer of a film under a contract for a firm order of a specified number of prints and the total charge including the price for release prints does not separately state charges for cans, reels, etc., you will be liable for sale tax on the sale of the cans, reels, etc., measured by a reasonable marked-up retail price commensurate with the industry practice where such items are sold at retail.

We suggest you separately state charges and collect and report tax on all retail sales of reels, boxes and cans.

Very truly yours,

Robert H. Anderson
Associate Tax Counsel

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