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**STATE BOARD OF EQUALIZATION**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

In the Matter of the Petition	)	DECISION AND RECOMMENDATION
for Redetermination of state	)	
and Local Sales and Use Taxes	)	
	)	
<u>Petitioner</u> _____	)	No.

The above-entitled matter came on regularly for hearing on February 23, 1981 in Los Angeles, California, before H. L. Cohen, Hearing Officer.

Appearing for Petitioner:

Appearing for the Board:

Mr. M. Laxner, Supervising Auditor  
West Los Angeles District

Protest

Petitioner protests the assertion of tax on self-consumed property purchased ex-tax and on the sale of incomplete motion picture productions. Tax was asserted based on an audit covering the period from April 1, 1975 through June 30, 1979. A deficiency determination was issued March 19, 1980. The amounts upon which the protested taxes based are:

<u>Audit Item</u>	<u>Amount</u>
B. Self-consumed property purchased ex-tax	\$300,400
C. Sales of incomplete productions	<u>225,946</u>
Total	\$526,346

Contentions

Petitioner contends that the purchase of property used in preparing incomplete productions should be regarded as exempt inasmuch as tax applies to the sale of the incomplete productions.

Petitioner also contends that the productions sale of which is sought to be taxed were in fact complete productions.

### Summary

1. Petitioner is a corporation engaged in business as a producer of complete and incomplete motion picture productions. It commenced in business in July 1972. There has been no prior audit.

2. At the hearing petitioner conceded liability for tax on Audit Item B.

3. The auditor reviewed petitioner's contracts, books, and records to ascertain which jobs were complete productions, sale of which is not subject to tax, and which were incomplete productions, sale of which is taxable. The auditor regarded title sequences, sequences which are part of a complete production, montage sequences for television, post production work, and work print delivery charges as incomplete production work which is subject to tax.

4. Petitioner states that the items in question are in general short segments of a few minutes duration, but petitioner argues that these segments are complete in themselves and should be regarded as complete productions. One large category is title montages for television shows. These typically contain an opening sequence and list the stars and guests. Awards are given for opening montages. They are not produced by the producers of the shows. Sometimes the montages are also used as commercials to advertise the show. Another category is short segments for comedy or variety shows such as the Smothers Brothers Show or Saturday Night Live. Petitioner states that these short segments are complete in themselves and are not merely a part of a larger production. Another category consists of dramatizations of songs. Petitioner hires talent, records, films, and edits these segments. Another category consists of television commercials for motion pictures. These use scenes and soundtrack from the original filming prepared into the television commercial by petitioner and may include voice-over. Petitioner also argues that some work which the auditor regarded as post-production work was actually production work. Petitioner states that post-production work is refining, titling, adding soundtracks and music, and editing productions of others petitioner states that it does this type of work only on its own productions. Another category discussed by petitioner is the preparation of old documentary or historical sequences which are used to date a period in a movie or to show the passing of time. An example is the use of old newsreel clips to show the passage of time in the motion picture "Same Time Next Year". Petitioner argues that these segments are totally separable from the motion picture and should be regarded as complete productions. The remaining category discussed by petitioner are montage scenes for television miniseries productions to show events from previous episodes. These sometimes include independent shots.

### Analysis and Conclusions

1. Sales and Use Tax Regulation 1529 provides in subdivision (a) that producers of motion pictures are consumers of film and other personal property used in production, and tax applies to sales to producers of such property. Subdivision (b) (2) of the regulation provides that where a producer subcontracts for segments of a production, the producer is the consumer of the subcontracted segments and tax applies to the sale of the segment by the subcontractor. Subdivision (b) (1) provides that for a motion picture to constitute a production it must be entirely on film or videotape, have continuity and direction, and be complete in itself as

distinguished from "trailer" or "stock" shots. Subdivision (c) (1) (C) provides that sales of motion picture productions by the producer are not subject to tax. Subdivision (d) provides that sales of incomplete productions are subject to tax. The entire issue here is factual; that is, do petitioner's films constitute exempt complete productions or taxable incomplete productions?

2. Where a segment is produced with the intention of including it as an integral part of a larger production, it should be concluded that that segment is not a complete production. Title montages are thus not complete productions, regardless of the fact that they may also be used as commercials. The principal purpose for the montages is for them to be part of a larger production; the use as a commercial is secondary and incidental. Short segments for variety or comedy shows are not intended to stand alone. They are intended to be part of a larger show and have continuity with the other segments. They are not complete in themselves. Song dramatizations are also intended to be a part of a larger production and are therefore not complete in themselves. Documentary or historical sequences used in productions are part of the production and are not complete in themselves. Even though they are separable, they are intended for use as part of a specific production. Montages for miniseries productions are intended to make the episode to which they are attached understandable to viewers who have not seen the previous episodes. They are integral parts of the episodes to which they are attached. They are not intended to be independent complete productions.

3. Subdivision (b) (1) (A) provides that commercials may qualify as productions. Where petitioner prepares television commercials for motion pictures by using excerpts from the motion picture, the commercial is complete and no tax should apply notwithstanding that portions of the motion picture are used. To find otherwise would result in a situation in which motion picture commercials would almost always be taxable. If tax was applied by the auditor to any motion pictures commercials which are complete in themselves, the amount should be deleted from the measure of tax. Petitioner should be allowed twenty days in which to present a list of such transactions to the auditor for verification.

4. Where petitioner performs post-production work on its own productions or segments, application of tax must be based on whether the production or segment is itself taxable. If such work is done independent of petitioner's own productions or segments, the charges would be taxable if the work affects the film. Petitioner has described some of the work it does as merely transportation. If any of petitioner's work for outside producers does not involve actual work on film or videotape, the charges should be deleted from the measure of tax. Petitioner should be allowed twenty days in which to submit evidence to the auditor for verification.

#### Recommendation

Allow petitioner twenty days to submit evidence with respect to motion picture commercials for television and post production work. Make adjustments as appropriate based on the evidence submitted. West Los Angeles District to make adjustments. Redetermine without other adjustment.

H.L. Cohen, Hearing Officer

Reviewed for Audit:  
Principal Tax Auditor