



STATE BOARD OF EQUALIZATION

916-445-3723

October 24, 1980

Dear Mr.

This is in response to your letter of August 6, 1980. We apologize for the delay in our reply.

On July 17, in response to your inquiry of June 20, 1980, we advise you as to the sales tax consequences of a hypothetical situation involving a sale of assets used by a television broadcaster.

By your letter of August 6 you have sought to make more specific the hypothetical transaction under consideration.

As we understand it the parent corporation engages in normal broadcasting activities; that is, it owns and uses television cameras, mobile equipment, video tape recorders, and other technical equipment. It uses the technical equipment for living broadcasting purposes and to prepare taped commercials and taped commercials and taped news or entertainment programs. In the case of commercials, some customers might wish to acquire duplicate copies to be furnished to other television stations. In the case of original programming, --- might wish to license the programs to other stations.

With respect to programming, as you suggest, the term "sale" does not include a lease of "motion pictures, including television, films and tapes." The subsidiary's charge to the parent for making duplicate copies of news and other programming would be taxable, but the parent's licensing of the programs is not classified as a selling activity under the Sales and Use Tax Law.

With respect to commercials, the original ownership of the commercial would appear to be in the parent. The parent would be viewed as the manufacturer of the commercial under the sales tax law. If the parent sells (transfers title to) the commercial to the subsidiary, this would be a sale under the sales tax law, and the sale would be taxable as a retail sale. This would be an activity which would require the parent to hold a seller's permit. The sale of the parent's assets would not qualify as an occasional sale. If, however, the parent transfers only possession of the commercial tape to the subsidiary, then the transfer is not regarded as a "sale," no permit is required, and the sale of assets by the parent would be nontaxable.

If it is the subsidiary which produces the commercials for advertising customers and furnishes the commercials for broadcasting to the parent, then the activities of the subsidiary in producing the commercial, making duplicates, and selling the duplicates would not be attributed to the parent, and the parent would not be engaged in a selling activity which would require it to hold a permit. The sale of the parent's assets would then qualify as a nontaxable occasional sale.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

J:alicetilton

Bc: Honorable Richard Nevins
Hollywood – District Administrator