

## **375.0000 MOTION PICTURES—Regulation 1529**

### **(a) TRANSACTIONS UNDER PRIOR LAW (MAY 1, 1950 TO SEPT. 21, 1988)**

#### **(1) IN GENERAL—PRODUCERS**

[375.0020](#) **Co-Producers.** A motion picture studio that agrees with another party to jointly produce a television series is entitled to co-producer's status even though, in order for the parties to carry out their purposes, they form a new corporation which is responsible for producing the film. In this case, however, this was the only corporate purpose of the new corporation and it was dissolved following production. 8/23/66.

[375.0040](#) **Co-Producers.** A corporation furnishing facilities and services to a producer of a television series is not a co-producer of the series by reason of furnishing facilities and services pursuant to a standard facilities contract. The corporation did not have the right to participate in profits of the production, nor did it share responsibility for producing the production. A corporation's "equity interest" in the production through ownership of stock in the producer corporation does not qualify the corporation as a co-producer. The corporation and the producer are separate and distinct persons. Therefore, sales made to the producer by the corporation are subject to sales tax. 12/4/69.

[375.0050](#) **Co-Producers.** A television station is a co-producer of the commercial when it receives a commercial which is not a complete production from its client, performs the work necessary to complete the commercial as a production, and broadcasts the completed commercial for a fee. Tax does not apply to charges for fabricating the commercial or to the transfer of copies required by the original production contract. Tax does apply if additional copies are sold. 10/15/79.

375.0054 **Film Editing.** A film editor is hired directly by motion picture producers to edit commercials. The editor sends a bid quotation to the producer, breaks out the components such as services and materials (e.g., film) and adds a 35% markup.

The bid quotation, together with the customer's acceptance, constitutes the contract between the parties. Where the contract provides for a sale of materials and the performance of a service, the editor would be making a retail sale of materials despite the lump-sum billing. In order for the editor to be regarded as a consumer of the materials, both the contract and the invoicing must be consistent with that conclusion. 7/11/88.

[375.0057](#) **Format Changes, EPKs and Screeners—When Taxable.** The United States and some parts of the world utilize a "NTSC" format for videotapes. Other parts of the world utilize other formats such as "PAL" or "SECAM." A studio will sometimes retain a firm to convert a qualified motion picture from one broadcast format to another broadcast format. To complete the work, the firm purchases raw film or tape stock, uses its machinery to transfer the qualified motion picture onto the raw film or tape, and then sells the resulting product to the studio. Sometimes the conversion results in the studio obtaining a single master in another format, and additional post-production is required prior to manufacturing release prints. Other times multiple copies are produced.

Regulation 1529(d)(11) defines a release print as a copy of a qualified motion picture complete in all aspects, which is of a quality suitable for exhibition or broadcast. The manufacture of release prints is not the performance of qualified production services and the sale of a release print to a person for exhibition or broadcast is a retail sale subject to sales tax. (Regulation 1529(b)(3)(A).) Therefore, if the firm converts a qualified motion picture from an NTSC format into multiple broadcast quality copies (release prints) in a different format, the charges will be taxable, absent some exemption or exclusion, e.g., a sale for resale or a sale in interstate or foreign commerce. However, if the conversion is to a different format upon which additional post production must be performed before release prints can be made (such as the addition of foreign language credits and sound track), the work of the company to perform the conversion constitutes qualified production services, and the charges are not taxable.

Electronic Press Kits (EPKs) and “Screeners” may or may not fall into the category of release prints. An EPK is either a video or DVD prepared for movie studios to be distributed to local television stations prior to the release of a new movie. The studio sends a master of the EPK to the duplicating facility, which fabricates several hundred tape or DVD copies of the EPK for the studio. EPKs often require additional sound editing and color correction before the tape or DVD can be broadcast. If the EPKs are of broadcast quality and are used for exhibition or display without further editing, they constitute release prints and the charges of the duplicating facility are taxable. If the EPKs are not of exhibition or broadcast quality, then the preparation of the EPKs constitutes qualified production services and the charges would be nontaxable.

“Screeners” are promotional or marketing copies of motion pictures that are distributed to video stores, critics, industry executives, etc. for personal use. Screeners routinely are “burned in” with an anti-piracy warning making them unsuitable for broadcast or exhibition. If the screeners have anti-piracy warnings, they do not qualify for exhibition or broadcast and are not release prints. Charges to produce such screeners would not be taxable. 4/8/04. (2005–2).

[375.0060](#) **Independent Contractor.** An individual who purchases raw negative, does the camera work, and sends the film to the laboratory for processing but does not share the profits of the production, is an independent contractor. His customer, who is billed in a lump-sum for the contractor’s fee and the cost of film and lab charges plus a markup on the latter two items, is a producer and the consumer of such tangible personal property as the film. The contractor’s purchase of such items to be resold to the producer may be made under a resale certificate if the contractor holds a valid seller’s permit, or the contractor may elect to take a “tax-paid purchases resold” deduction on his quarterly return. 9/29/64.

375.0070 **Long-Term Studio Personnel—“Week”.** The “week” referred to in paragraph 5 of Regulation 1529(c)(2) is a consecutive 7-day period rather than a calendar week. Accordingly, it would require a period of more than 9 days to qualify under the criterion of “For more than one week and for more than two consecutive, full working days each week”. 5/5/75.

[375.0080](#) **Non-Productions—Measure of Tax.** Where picture is not a production (accordingly, where producer is retailer), entire charge is taxable without any deduction for costs such as editing, rental charge for equipment, film processing, prop costs and other expenses. 12/27/51.

375.0090 **Producer.** A film service company whose responsibility for producing a picture involves a substantial part of the entire production and who is obligated to furnish a finished film ready for distribution to the public, is considered a producer under Regulation 1529. However, in the event that only a portion of the film is produced by the company and the responsibility for the final product lies elsewhere, the company is an independent contractor. 5/4/72

[375.0100](#) **Slide Films.** A person who produces slide films is a retailer rather than a consumer of the completed films with sales tax applying accordingly to whatever charge is made to the purchaser. 12/27/55.

375.0120 **Sobriety Tests.** Motion pictures taken in connection with sobriety tests given to drunken drivers under the Vehicle Code of the State of California, which become property of Police Department, are regarded as retail sales, subject to tax, by the person taking pictures. As a retailer, the person taking the pictures may purchase the film ex-tax for resale. 12/7/51.

[375.0140](#) **Television.** Sales of film and other tangible personal property to producer of complete television production are taxable but producer’s receipts from television station or advertiser are not taxable. 6/20/50.

375.0160 **United States—Pictures Produced for.** The fact that motion pictures are produced under contract with the United States or its instrumentalities does not affect the tax liability of the person who produces or performs “qualified production services” as defined under Regulation 1529. A person who produces a motion picture or performs “qualified production services” is regarded as the consumer of the tangible personal property used in production and the tax applies to the sales to such persons. 9/30/53.

## (2) PRODUCTIONS

375.0180 **Advertising Playlets.** Advertising playlets which are complete and not part of another picture are “productions.” 5/17/50.

[375.0200](#) **Animated Pictures.** The production of an animated motion picture film includes six general steps:

(1) Storyboard. Covers story planning with a client through a discussion of rough visualization of the high points of the script.

(2) Layout. Consists of preparation of a sufficient number of pictures in technical and artistic detail to guide the animation artists.

(3) Animation. Consists of the drawing of step-by-step scenes necessary to produce the entire action.

(4) Inking and/or Painting. Consists of tracing and/or painting the scenes prepared in step No. 3 on celluloid cells.

(5) Photographing. Consists of photographing the cells on a continuous roll of film.

(6) Dub-in-sound. Consists of fabricating the sound track that goes on the film.

An animation film studio need not do all six general steps in order to be considered the producer of the film. If an animation film studio contracts with an ad agency or anyone else to produce the film and is responsible for and in general charge of making the finished film, the studio will be the producer. If the film is a complete production, the producer will be considered to be the consumer.

A person who is responsible for and in complete charge of making a completed film production may subcontract for the production of segments of the film. Where this is done, the person responsible for the completed film is the consumer of the segments subcontracted and the subcontractor is the retailer thereof.

If an animation studio merely produces a segment of a complete production, either as a subcontractor or independent contractor, the studio will be the retailer of the segment so produced and tax will apply to charges therefor. 8/30/65.

[375.0220](#) **Cans, Reels, etc.** The producer of a motion picture is liable for sales tax on separate charges for cans, reels, and boxes regardless of whether they are sold separately or under a contract to produce a film and furnish a specified number of prints. Cans, reels, and boxes are not tangible personal property used in the production of a motion picture. 4/20/65.

375.0230 **Complete and Incomplete Productions.** Where a segment is produced with the intention of including it as an integral part of a large production, the segment is not a complete production. Title montages are thus not complete productions even though they may also be used as commercials for the complete production. Short segments used in variety or comedy programs, dramatizations intended to be part of a larger production, documentary or historical sequences used to date the period of the production, and updating montages for series are not complete productions. 5/7/81.

[375.0240](#) **Complete Productions, Motion Pictures.** In determining whether a motion picture constitutes a complete production, the fact that the storyboard is not produced or drawn by the studio making the picture does not in itself prevent the studio from being regarded as the producer. This applies whether the film is all animated, all live action, or a combination thereof. 4/8/65.

375.0260 **Definition.** Whether the producer is to be considered a retailer or consumer with respect to any particular film depends upon whether the film is regarded as a “production.” A producer is regarded as the consumer of a series of one-minute television films produced under contract with an advertiser, assuming that the films, even though having a running time of only one minute, are complete in themselves and

involve continuity, direction, story, or the explanation of an idea or process. The foregoing does not apply should a producer produce a picture on his own account, retain title to the negative, and sell one or more prints. 6/18/51.

375.0261 **Definition.** A driver education package consisting of 16 mm motion picture film in combination with 35 mm slide film and sound on tape is not a motion picture production within the meaning of Regulation 1529. To be a motion picture production, the 16 mm film must be complete in itself. 3/20/73.

[375.0280](#) **Release Prints.** Release prints are included in the “production” of a motion picture and sales tax applies to the materials entering into such release prints. 10/14/53.

[375.0290](#) **Special Effects for Motion Pictures.** Persons supplying action sequences which require bullet hit effects, pyrotechnics, break-away props and special effects elements such as wind, rain, fire, smoke, and fog are providing a service to the client if the persons or their employees operate the equipment which cause the above special effects. The persons providing such services are the consumers of the equipment.

A sale of a break-away prop is made when an actor or other person who is not an employee of the provider of the props destroys the break-away prop which was placed on the set. If there is temporary transfer of a reusable break-away prop, this is a lease of the prop and tax application is governed by Regulation 1660. 6/17/86.

[375.0300](#) **Television Commercials.** Motion picture productions includes advertising commercials provided the commercial is a complete picture as distinguished from stock shots or other portions of complete productions. The producer is regarded as the consumer of all film and other property used in the production of commercials. As the consumer, the producer is not regarded as selling tangible personal property and is not required to pay sales tax on its gross receipts from an advertising agency. The tax applies to the cost to him of the film and other property. 7/3/81; 12/22/85.

375.0305 **Trailers.** “Generally, advertisements for motion pictures do not qualify as “productions” under Regulation 1529. Specifically, “trailers” do not qualify as “productions”. Trailers consist of nothing more than film clips from the advertised motion picture films, together with titles and voiceovers.

Trailers, whether prepared for showing in motion picture theaters, on television, or through other media, are not productions. Trailers are not productions because the person who makes a motion picture trailer is not responsible for the content of the film sequences taken from the complete motion picture and used in preparation of the trailer. The producer of the motion picture is responsible for the video or graphic content and the sound content of the segments incorporated into the trailer. The person preparing the trailer performs essentially an editing function with respect to this material. The person who prepares the trailer is not responsible for the script, budget, casting, sound or music content of the film sequences incorporated into the trailer. The fact that the person who prepares the motion picture trailer may perform a creative function and may hire talent (an announcer) to incorporate narrative sound material (voiceover) into the trailer is not sufficient to overcome the fact that the person who prepares the trailer does no production recording and does no production photography.

A “producer,” under paragraph (b)(2) of the regulation, is “a person who is responsible for and in complete charge of making a production. . . .” The making of a motion picture production involves those elements described in paragraph (c)(2) of the regulation, under which a classification is made of charges to producers. Virtually all of the graphic and sound content of the trailer is arranged for by the producer of the motion picture film. The person who makes the trailer may prepare the advertising scenario, may engage talent to a minimal extent, and may be responsible for film editing. What is missing, however, is the heart of what a producer does. What a producer does is couple video images with sound on a film product. That function has been performed by the person who produces the motion picture production itself. For purposes of the sales tax law, a trailer is nothing more than an edited version of a production. If a production is shortened for showing on television, the television version is not a new production. The result would be the same even if some resequencing of the scenes were to occur.

The entire matter may be stated another way—excerpts from a production, do not a production make. The person who makes the trailer is not responsible for film content within the concept of Regulation 1529.’’

It is possible that an advertisement for a motion picture might qualify in an unusual case as a “commercial” and as a “production,” but for the film to so qualify, the person who produces the advertisement must be responsible for and in general charge of filming and recording the principal portion of the film. 12/17/84; 4/11/85; 12/11/85.

[375.0310](#) **Transfer by Producer.** Under Regulation 1529, the outright transfer of a motion picture by the producer, including the negative, the print, and all rights connected with the picture, prior to exhibition, is not a sale for sales and use tax purposes, whether or not the picture was produced under a contract with a sponsor. 4/24/69.

375.0320 **Video Tape Production.** Existing regulations, rulings and opinions of the Board respecting motion picture production are generally applicable to the substitute method of video tape production. 9/10/59.

[375.0340](#) **Videotape Television Program as a Production.** The owner of a travel film who produced a videotape of the film, an introduction and a close, using his own talent, director and script and a television station’s studio, props, equipment, videotape and operating personnel was a producer under Regulation 1529. Accordingly, tax was applicable to the charges made by the television station in accordance with the provisions of Regulation 1529. 12/27/67.

### (3) PROCESSING AND FABRICATING—SOUND

[375.0360](#) **Dupe Negatives—Development Charges.** Where a studio laboratory fabricates a “dupe” negative, the charges for development of “dupe” negatives are subject to tax. In such cases, the processor or developer, using his own equipment, exposes the raw stock negative which he then develops. Where the customer furnishes exposed raw film to be finished by the developer, charges for such developing are exempt. 3/22/65.

[375.0380](#) **Film Stock for Use in Sound Recording.** Film stock may be sold by a recording studio for use in sound recording by the studio without subjecting the studio to sales tax upon its charges for sound services. The charge for the services are taxable only if they would be taxable had the customer furnished the property. 4/2/57.

[375.0410](#) **Printing, Cutting, Editing,** charges for, in processing motion picture films for producers or other consumers, are taxable under Regulation 1526. 4/18/51.

[375.0420](#) **Processing Charges.** Processing charges for exposing motion picture film negatives supplied by another studio or producer are subject to sales tax. 7/2/53.

[375.0440](#) **Recording Tapes.** Where a company provides all materials and performs the fabrication labor prior to contracting with customers, the sales are taxable; so too where the music on the master cues is transferred to blank tape furnished by the company. Where the company acts merely as supervisor for the purpose of selecting appropriate music for a picture and magnetic film copies of the selected music are merely loaned to a customer who “dubs” it into the picture and returns the copies of the music, no tax liability arises. But where the company transfers the music and performs the “dubbing” itself and the finished sound track is delivered to the producer, the result is a taxable sale of tangible personal property. 2/18/60.

[375.0460](#) **Sound Recording on Customer’s Tape.** Charges for doing sound recording upon customer’s tape, assuming the customer is a motion picture producer, are retail sales subject to tax.

Should the customer not be a producer, but a seller of the film with the sound recorded thereon, the tax would not apply. 2/19/53.

[375.0500](#) **Tape and Disc.** Where the sound portion of a filmstrip consists of a magnetic tape or a special lacquer disc, the tape or disc may be purchased ex-tax for resale. 7/27/56.

[375.0510](#) **Television Stations.** Television stations are engaged in the business of rendering broadcasting services. Charges for fabricating previously completed productions for broadcasting, such as editing to fit the available broadcasting time or adding logos not referred to in the body of the production, are incidental to the broadcasting services and therefore not subject to tax. 10/15/79.

[375.0520](#) **Temporary Employees.** Charges by a studio for the services of a cameraman or assistant cameraman such as matte-shot artists are not taxable to the studio where the person is loaned to another studio and becomes its temporary employee by working at its place of business and under its direction and control. The fact he remains on the payroll of the first studio does not prevent him from being a temporary employee of the second. 8/23/66.

#### (4) USE IN STATE

[375.0540](#) **Exhibiting in this State—As Constituting Taxable Use.** Producers of motion pictures are regarded as the consumers of all film and other tangible personal property used in production. In case of a picture produced outside the state and furnished by the producer to exhibitors in this state the producer as the consumer of the film and other components of the finished prints would be liable for use tax measured by the cost of the film and other components purchased outside this state. In the event the prints had been substantially used by being exhibited outside this state prior to being exhibited in this state the tax would not be applicable because the film and other ingredients would not be regarded as having been purchased for use in this state. 11/9/51.

[375.0560](#) **Master Film Positives Retained in State.** The owner of original negatives has a California firm make “master positives” or fine grain prints. The “master positives” are not shipped but are retained in California for use in making duplicate negatives. The receipts from the sale of such “master positives” are subject to sales tax. 6/23/53.

[375.0580](#) **Out-of-State Production of Live Film—Filmed Commercials.** Animated film strips made outside the state and shipped into the state for use as part of filmed television commercials are products sold to a California consumer, the producer who integrates the film strips into the commercials. The total cost of film strips brought into the state are subject to the tax since the film is completely consumed and integrated into the final product by the California operation. It makes no difference if the final product is shipped out of the state because the completed production is made in California and the consumption of the integral parts occurs within the state. 8/10/64.

[375.0620](#) **Television—Films and Tapes Shipped to California Television Stations.** When television films and tapes are shipped from a point outside this state by the producer to a California television station without having been first publicly shown on stations outside this state, the measure of the use tax is the material cost to the producer of the films and tapes. It does not include the cost of property which became a part of film, tape or other property first shipped to stations in other states and first publicly shown on such stations. The measure of the tax is limited to the cost price of the tangible personal property purchased by the out-of-state producer and does not include any of the producer’s cost in its self-processing or manufacturing the items purchased before shipping them to the stations. 2/3/66.

[375.0640](#) **Television—Films and Tapes Shipped to California Television Stations.** The rental of films to television stations in California by an out-of-state firm is a use by the out-of-state firm and is subject to use tax if the films are purchased for use in California. The tax is measured by the cost of the films. 11/13/53.

#### (b) ON AND AFTER SEPTEMBER 22, 1988

#### (1) GENERALLY

**375.0710 Animation.** A small independent film production company hires a larger film production company to prepare and film some animation for a project being produced. The smaller company was billed for animation stand rental, art supplies, other supplies (film, etc.) and labor and fringe benefits (for personnel who actually operated their camera).

The charge for animation would be nontaxable as a charge for “qualified production services”. Tax does not apply to charges for tangible personal property transferred in connection with the performance of qualified production services. 12/1/92.

**375.0722 Art Director Fees.** An art director is engaged by a production company to design, construct, and decorate a motion picture set. The actual construction of the set is subcontracted to others. Separately stated charges for fees and services by the art director are not exempt labor charges. “Gross Receipts”, the measure of the sales tax, is defined in section 6012 to include services that are related to the sale of tangible personal property. The art director’s contract is for the design and furnishing of sets which are clearly tangible personal property. The entire charge is taxable with no deduction for fees or services. 2/13/90.

**375.0730 Background Paintings.** A vendor is commissioned to create, paint and deliver background to be used to develop and produce “qualified motion pictures.” The backgrounds, which are painted on 103 × 123 paper, are combined with other animation work to create animated films. The animated films are then sold to outside clients.

The background paintings are “qualified production services” under Sales and Use Tax Regulation 1529(b)(2) and the charge by the vendor is nontaxable. Tax applies to the sale of tangible personal property purchased by the vendor which is used in producing the background paintings. 12/11/91.

**375.0735 Bid Prints.** “Bid Prints” used exclusively to evaluate market potential are within the definition of qualified production services and tax does not apply to charges for them. However, if the bid print is subsequently used for exhibition or broadcast purposes, the exclusion from taxation is negated and the seller is liable for sales tax on the transaction. Sellers of prints which may be used as bid prints or as release prints may find it desirable to amend their contracts to provide for reimbursement of any tax which may subsequently be found to be due. 10/1/90; 5/29/96.

**375.0745 Charges in Connection with the Production of a “Qualified Motion Picture.”** Tax application for the various charges in connection with the production of all or any part of a qualified motion picture are set forth below:

(1) Film Processing—The processing of film prior to the manufacture of the release print is not subject to tax. Among the items included in film processing are: developing, printing, superimposure, first trial from the original negative, first trial from the dupe negative, sync check prints, master positives and duplicate negatives. With respect to the manufacture of release prints, these charges will be taxable unless otherwise exempt (i.e., resale, interstate commerce, etc.), whether or not the release prints are for private or commercial exhibition.

(2) Charges by the Title and Optical Department—Services provided by the title and optical department are considered to be nontaxable qualified production services when the resultant work product being manufactured is incorporated into the original master positive or dupe negative prior to the manufacture of release prints.

(3) Charges by the Videotape Department—The services provided by this department include the transfer of film dailies to tape and the manufacture of cassettes used for viewing for quality, evaluation and context, but not for broadcast or pay to view. The above services, if not in connection with the manufacture of release prints, are not subject to tax. 8/3/89; 5/29/96.

**375.0750 Computer Created Graphics and Animation.** A business provides computer graphics and animation for video and television. The graphics and animation are created on a computer.

When special effects, animation, or computer graphics are created for use in producing a qualified motion picture, qualified production services are performed. Tax does not apply to these charges. Tax applies to the sale of tangible personal property to the taxpayer, used in providing the qualified production services including the materials which comprise the final product that is transferred to the customer. However, if the graphics and animation are created for live television shows that are not videotaped, tax applies to the total charge. 5/4/93.

**375.0755 Computer Graphics.** A firm designs, builds and colors backgrounds, used for animation and special effects, on a computer. For the final transfer of these images to videotape, they are combined with a synchronized signal of live action video (supplied by the producer) and genlocked onto a ¼ editing bay. In this case, the work performed by the firm are “qualified production services” when the result is transferred to the client on film, tape or other audio visual embodiment and is used for “qualified motion pictures.” 8/1/89.

**375.0762 Corporate Marketing and Training Videos.** Corporate training and marketing videos are considered “qualified motion pictures” within the meaning of Regulation 1529(b)(1). Therefore, the producer of such videotapes is the consumer rather than the retailer of the videotapes and sales or use tax applies to the sale of tangible personal property which the producer uses in making the qualified motion pictures. 11/2/95.

**375.0770 Duplicate Videotapes.** The transfer of duplicate videotapes for the purpose of exhibition or broadcast, i.e., release prints, is a sale. The tax applies as it does to any other sale of tangible personal property. Duplicate tapes transferred for other purposes are considered to be the result of “qualified production services” and tax does not apply to such transfers. 6/4/90.

**375.0780 Editing and Duplicating Videotapes.** A videographer (1) makes videotapes for weddings, birthdays, etc.; (2) edits customer’s home videos; and (3) duplicates customer’s videos.

A charge for video photography for a client is subject to sales tax even if the client provides the videotape and camera. Motion pictures produced for private noncommercial use, such as weddings, etc., are excluded from “qualified motion pictures”. Sales tax applies to the charges for the videotapes. Assuming that the customer’s videos are for private, noncommercial use, tax applies to charges for editing home videos and tax also applies to charges for duplicating customer’s videos. 1/7/93.

**375.0781 Editing Qualified Motion Pictures.** When performing nontaxable editing services on a qualified motion picture on film purchased by the producer, the person doing the editing pays tax reimbursement to his vendors on the purchases of equipment and supplies such as splicing tape, grease pencils, viewer bulbs, and other equipment and maintenance items. No further sales or use tax is due on the transaction. 3/15/89.

**375.0783 Electronic Press Kits—Making Copies.** A taxpayer manufactures copies of electronic press kits (500–600 video tapes per customer) from a master provided by a movie studio and ships them to television studios throughout the country. The electronic press kit is either a ¼ or ½ inch video tape prepared by movie studios prior to the release of a new film. The tape will consist of several interviews with the star or co-stars and various clips from the movie. There are gaps or blank time spots between every interview and movie clip. These gaps are left intentionally so that local TV stations will be able to impose their film reviewer on the tape and edit and customize the tape as they wish prior to the broadcast.

The taxpayer is not performing any qualified production services since it does not perform any work in connection with the production of the press kit. The studio which provides the press kit master to the taxpayer has completed production of the press kit. The taxpayer merely manufactures duplicate tapes for the exhibition or broadcast by the television station. Additionally, section 6010.6(b)(4) specifically excludes from the “qualified production services” definition “services or other work to manufacture release prints or to duplicate tapes for exhibition or broadcast.” 1/21/97.

**375.0785 Equipment and Supplies.** A video production service asks whether the purchase of video equipment is always subject to tax. The service also believes that supplies, including expendable items such as batteries, lighting bulbs, gaffers, tape, cabling, etc., are as much a part of the finished product as the videotape and are an integral part of the finished product they deliver.

When equipment is purchased to use in producing videotapes, tax applies to the sale of the equipment to the service. When supplies are purchased, tax applies to the sale to the service or to the service's use of the property. 5/28/92.

**375.0795 Film and Video Productions.** A film and video production company provides its customers with training video production services and also provides for video duplication. The customer provides an idea for the videotape and also owns all materials used in the production of the product. The company produces the script, scenes tapes, and the master tape which is the final product. The final product is used by the customer in house as a training or safety aid for its employees.

When a "qualified motion picture" is produced, tax does not apply to the charge to the customer. Training films are qualified motion pictures. The producer is the consumer of, and tax applies to the sale to the producer of, tangible personal property used in making the qualified motion picture.

If the producer purchases materials and sells them to the customer prior to use, the producer is the retailer of such materials and tax applies to the sale of the materials by the producer. Tax applies to the sale of duplications provided to the customers to use as release prints. 8/31/92.

**375.0800 Filming Animation.** Equipment provided by a firm hired by a film production company to film animation which the production company was producing was not rented to the production company. The firm doing the filming was performing "qualified production services" and was the consumer of the equipment. It could not purchase the equipment ex-tax for resale but should have paid tax reimbursement or use tax when it purchased the equipment. 2/25/93.

**375.0810 Film-to-Tape Transfer.** Film-to-tape transfer services for corporations which produce motion pictures in-house for training, demonstration, and research and development are exempt from tax except when the film-to-tape transfer copies are used for exhibition or broadcast purposes. If film-to-tape transfer copies are used for either of these purposes, the charges for film-to-tape transfers are taxable. 7/11/89.

**375.0848 Interactive Technology.** A motion picture on a DVD is primarily a motion picture under Revenue and Taxation Code section 6010.6 even if it includes interactive technology to navigate that motion picture. 11/03/00. (2001-2).

**375.0870 "Lease" of Model.** A producer hires company Z to fabricate a model, but does not obtain title to that model. Company Z "loans" the model to a special effects firm to use in filming for the producer. This arrangement is a lease subject to tax. The producer is the lessee. 8/24/90.

**375.0875 License Agreement of Videotape.** A video production company, in conjunction with university faculty, develops videotape programs of industry related topics and speakers, in order to supplement existing university curricula. The production company obtains corporate funding for the project, is responsible for technical content, distributes the videotapes and holds the copyright. Copies of the videotapes are transferred to the participating universities under a site license agreement which is good for the life of the tape.

Since the universities are not obligated to return the tape, the transaction is a sale rather than a lease. Accordingly, tax applies to the site license fees received from the universities as part of the gross receipts from the sales of the videotapes. 10/6/89.

**375.0878 Lighting Equipment and Services.** A taxpayer provides lighting direction, lighting equipment and equipment operators to qualified motion picture producers. The charges for the services and the

equipment are separately stated on billings to the producers. However, in no case is the equipment provided without the services.

The operating of lighting equipment does not result in a fabrication of any audio-visual embodiment and, thus, does not fall within the definition of “qualified production services” under Regulation 1529. Also, the taxpayer is not leasing out its equipment since it requires the customer to contract for the taxpayer to operate the equipment. The taxpayer does not transfer possession or control of the equipment to the customer. Rather, the taxpayer makes use of its equipment. Therefore, the taxpayer is the consumer of the equipment used to provide lighting services and should pay sales tax reimbursement or use tax at the time of acquiring the equipment used to provide the services. 6/3/97.

375.0884 **Models.** The sale of a model to a visual effects company is a taxable sale. The subsequent transfer of the model to the producer pursuant to a “qualified production service contract” is not a “sale.”

If title but not possession of the model passes to the visual effects company, the transaction is a “sale.” If neither title nor possession passes and the model maker merely operates the model, the model maker is the consumer of materials used to make the model.

If a sale is made, the following charges are included in the measure of tax:

(1) Charges for loading, unloading, moving, and trucking the model by use of the seller’s facilities unless there is an explicit title clause as provided in Regulation 1628.

(2) Assembling the model. However, charges for bolting the model to the stage are excluded installation charges. 4/29/91.

375.0885 **Models.** A special effects firm that uses a special model in the performance of “qualified production services” is the consumer of the model and the sale of the model to that person is a taxable sale. The subsequent transfer of the model by the special effects firm to the producer is not taxable.

Fabrication of the model is not “qualified production services” whether the buyer is the producer or a person performing the special effects service for the producer. 8/24/90.

375.0885.200 **Models—Qualified Motion Picture.** Company A is engaged by Company X to (1) manufacture models or puppets, (2) photograph visual effects using model or puppets, and (3) deliver the original film of the visual effect to Company X. When the film is delivered, Company A will also deliver the models and puppets to Company X, which will be the owner of them. The visual effects produced by Company A will be used in the production of a qualified motion picture.

Under these facts, Company A is performing “qualified production service” and is the consumer of the models or puppets it manufactures. Tax applies to the sale to Company A of the materials it uses to manufacture the models or puppets. Company A also is the consumer of the “original film” that it delivers to Company X, and tax applies to the sale to Company A of the raw film or tape it delivers to Company X.

Tax does not apply to Company A’s charge to Company X for the film or tape or models or puppets which Company A delivers to Company X in connection with Company A’s performance of the qualified production service. 2/5/96.

375.0885.700 **Motion Picture Trailers.** A company produces two types of end products: (1) a master tape of the film trailer which is sometimes produced on motion picture film rather than videotape. The trailers are produced by editing portions from an original movie film. The company understands that tax does not apply to its charge for the initial master tape or motion picture trailer it provides to the client; and (2) duplicate copies of the trailer.

The company may purchase the raw stock under resale certificate. The trailers produced by the company qualify as “qualified motion pictures.” The company is the consumer of the motion picture film and

videotape it uses to make the initial motion picture film or videotape trailer which is transferred to its clients. Tax does not apply to the company's transfer of that initial trailer to its customer. The duplicate copies of the motion picture film or videotape trailers which the company produces are "release prints or tapes for exhibition or broadcast." The company's sales of such release prints or tapes for exhibition or broadcast are subject to sales tax on the entire gross receipts of the sale. Since the company makes sales of products on both motion picture film and videotapes, the company may properly issue a resale certificate to its vendors when purchasing either of such raw stock. The company should not issue a resale certificate when purchasing other supplies and materials which will be consumed in making the trailers. 4/27/89.

**375.0886 Mounting Film on Reels.** A release print is a copy of a motion picture film produced on high quality stock and used for exhibition to the public. It is a release print regardless of whether it is wound on spool or reels. However, the initial winding of a release print on reels by a mounting house is taxable fabrication labor. 9/10/90; 5/29/96.

**375.0886.250 Negative Cutting.** Charges for negative cutting are nontaxable qualified production services when performed on a qualified motion picture. The company is the consumer of the materials used in providing the service and should pay sales tax reimbursement to its vendors or pay use tax when purchasing such materials. When providing nontaxable qualified production services, no tax applies to a charge for materials that are transferred to the customers incidental to the performance of the services. 2/21/89.

**375.0886.650 Outdoor Displays and Projected Images.** A taxpayer is in the business of producing outdoor displays featuring graphics which combine traditional printed outdoor displays and projected images. The images are projected using techniques that include stills, slides, motion pictures, interactive computer projections and light shows. The graphics may be projected onto billboards or onto architectural surfaces, such as buildings, walls, bridges, etc. The taxpayer creates and produces the graphics and may arrange for the lease of the equipment needed for the displays.

The tax consequences of the different circumstances involved in outdoor events are as follows:

(1) Programmed lighting. This is the use of automated stage lighting to produce theatrical effects. Custom computer programs may be used to vary the direction, intensity, and sequence of the lights used. Some projections may include a projected logo or other graphic images. "Gobos" may be inserted into light sources to project desired images. A gobo is defined as a glass or metal stencil made by lasers and created from artwork (e.g., logo sheets). Computer programs control the light source so that the projected images can appear to move and change.

If the computer program to control the light show qualifies as a custom program under Regulation 1502(f)(2), the charges for its sale or lease are not taxable.

With respect to the gobos projection method, the taxpayer produces finished art for the client, such as a logo or other graphic image, but a third party makes the gobo, using the finished art. Tax applies to the taxpayer's charges to its client for finished art produced by the taxpayer. (Regulation 1540(b)(4)(B).) If the gobos, special printing aids, or manufacturing aids are acquired from third parties by the taxpayer as its client's agent within the meaning of Regulation 1540(a)(2)(A), the third person supplier is the retailer of the property to the taxpayer's client and the taxable transaction is that sale.

Also, the taxpayer may act as an agent on behalf of its client in dealing with third persons in acquiring for sale or lease of any equipment, such as lights, trucks, generators, electronic equipment, etc., needed for the light show.

(2) Projected still images. Still Images may be projected by a slide projector, a motion picture projector, or a computer projector.

If the taxpayer acts as a seller or produces the finished slide films in-house, the taxpayer is the photographer and sales tax applies to the sales price of the slides to the client. The sales price does not

include expenses which are not a part of the gross receipts from the sale of the slides. Since the lease of the projection equipment, generators, and other tangible personal property needed to set up and project the slides is unrelated to the production of the slides sold, these charges are excluded from the gross receipts from the sale of the slides unless the lease is required as condition of the contract of sale of the slides.

If the taxpayer acquires the finished slides from an outside photographer and acts as its client's agent, tax applies as stated in item (1) above. The reimbursement for property acquired as an agent for the client should be separately invoiced or shown separately on an invoice to the client. (Regulation 1540(a)(2)(A).)

(3) Printed image with projection motion. This display divides an outdoor display into two sections. Fifty percent of the display is a printed image, e.g., printed onto a billboard. Fifty percent of the display is a projected motion picture, e.g., projected onto the same billboard.

In this situation, the printed image portion of the display is treated separately from the projected motion portion. Regulation 1540 governs the application of tax to the printed image portion. The application of tax to the projected motion portion of the display is governed by Regulation 1529. If the projected motion meets the definition of "qualified motion picture" in Regulation 1529(b)(1), the charge for the projected motion would not be taxable. However, charges for release prints are taxable when sold to a person for exhibition or broadcast.

(4) Projected still images with printed motion. This is an outdoor display that splits the display into two sections. Fifty percent is motion picture, while fifty percent is a projected still image.

The application of tax to slide projection is covered under item (2) above. However, if the stills are projected by means of a motion picture projector, e.g., continuous loops of motion picture film or tape, the stills would then be considered the same as a motion picture and Regulation 1529 would govern the application of the tax.

(5) Interactive Motion. This method uses a computer and projection equipment to project live computer output onto an outdoor display.

See response to item (1) above with respect to custom computer programs and the sale or lease of computers, projectors, and other equipment needed for the display. 12/18/95.

375.0887 **Qualified Motion Pictures.** Company A, a limited partnership with two general partners, provides post-production services to clients, including Company B, also a limited partnership. A is the general partner of B. Thus, A and B are managed by the same two individuals. B has no employees but owns equipment which is installed, maintained, and operated by A's employees. B produces and markets various types of videotapes including promotional and "how-to" tapes, travelogues, pilot programs, trailers and commercials. In producing videotapes, B engages A to hire scriptwriters, directors, and actors on an independent contractor basis. A charges B for the use of the independent contractors with respect to B's production. Post production work, involving supplying certain electronic treatment to a "raw" videotape in order to make a "master tape" is provided by only A. The treatment includes, among other things, editing a creation of certain graphics and graphic animation, recording of the voice track to be synchronized with the picture, and the creation of special effects. A also reproduces copies of the "master tape." The following questions were asked:

(1) Are the products of B "qualified motion pictures?"

The promotional and "how-to" tapes, travelogues, pilot programs, trailers and commercials qualify as qualified motion pictures. If motion pictures for private noncommercial use are produced, such as motion pictures videotapes of weddings and graduations, they would not qualify as qualified motion pictures.

(2) Are the activities of A "qualified production services?"

When A edits, creates computer graphics or graphic animation, records voice tracks, and creates special effects on the film, tape or other audiovisual embodiment in connection with the production of all or any part of the qualified motion pictures produced by B, A performs qualified production services. A's creation of other graphics, such as artwork, would not qualify as qualified production services. A would be the consumer of such artwork. Its subsequent transfer of the artwork pursuant to a contract for qualified production services (e.g., special effects) would not be subject to tax. A's reproduction of copies of the master tape is not a qualified production service when the work performed by A is to duplicate the copies for exhibition or broadcast.

(3) Are A and B required to collect sales tax in connection with any of their activities?

A's charge to B for qualified production services is not subject to tax. A's charge to B for duplicate tapes for exhibition or broadcast is subject to tax unless the sale is a sale for resale. B's transfer of the qualified motion picture to its customers is not subject to tax under circumstances described in section 6010.6(a)(2). B's retail sales of release prints are subject to sales tax. 2/9/89.

**375.0888 Qualified Motion Pictures and Production Services.** A person contracts to oversee the production of a qualified motion picture. That person writes the script, produces and directs the film, selects the cameraman, editor and other suppliers who will shoot and edit the film. The customer pays the cameraman, editor and other suppliers directly.

Writing, producing and directing are "qualified production services" as defined in section 6010.6(a)(4), the charges for which are not subject to tax. 3/1/89.

**375.0900 Qualified Production Service.** A person is engaged in the business of creating masks and models (items) that are used to generate "special effects" in motion pictures. The items are built of wood, plastic, rubber and other synthetic materials. There is no transfer of legal title but there is a transfer of possession of the items to the customer. In some instances creators of the items accompany the items to the filming location and manipulate the items in the course of filming. The filming is done by other persons.

When a person transfers possession of the items to the customer in this state or operates models under direction and control of the customer, there is a lease of tangible personal property under Regulation 1660(a)(1) rather than a "qualified production service" under Regulation 1590(d). 12/20/91.

**375.0901 Qualified Production Services.** The following charges are for nontaxable qualified production services when used in the production of a qualified motion picture pursuant with Regulation 1529(b)(2)(B)(1).

(1) Charges for furnishing computer discs containing graphics.

(2) Dub tapes for any intermediate use on the qualified motion picture before the release print is made. On the other hand, release dubs provided clients are subject to tax if sold at retail.

(3) Charges for storyboards.

The following items are taxable when purchased for use in making a "qualified motion picture."

(1) Purchase of still photographs.

(2) Purchases of paintings, models or artwork unless transferred in connection with "qualified production services" (e.g. models transferred in connection with special effects).

(3) Film which is used to produce a multi image slide show except any film actually sold to the client and not used in producing the end product. 3/1/90.

375.0902 **Qualified Production Services.** Tax application for the various charges in connection with the production of all or any part of a qualified motion picture are set forth below:

(1) Matte Painting

A matte painter is not performing any fabrication on film, tape, or other audio visual embodiment. Accordingly, charges for matte paints are taxable.

(2) Viewing Copies or Safety Masters

Sales of viewing copies or safety masters are not taxable if the intended use at the time of sale is not exhibition or broadcast. However, if the transaction called for delivery of 100 finished copies, it would appear that this number would actually be for exhibition or broadcast. The seller should in all cases obtain a statement in writing from the buyer to the effect that the copies, regardless of number, are not for exhibition or broadcast.

(3) Audio Tapes

Audio tapes can be used in a qualified motion picture or as a sound recording master tape. Use in a qualified motion picture is a use by the sound recording studio and not a sale. On the other hand, if it is used for a sound recording master tape, it is sold by the studio and the tax is measured by the sales price of the unprocessed media. A sound recording studio should obtain a statement signed by the purchaser stating the intended use of the tape.

(4) Release Prints

The first release print transferred by the producer to the sponsor is the qualified motion picture of which the producer is the consumer. Tax applies to charges to the producer by the processing lab for this print, regardless of the release date. Subsequent release prints may be purchased by the producer for resale to the extent such prints will be sold by producer to the sponsor.

(5) Seller's Permit Requirements

Persons who perform only qualified production services and make no retail sales should not hold seller's permits. If they purchase equipment from out-of-state vendors who are not engaged in business in this state, they should apply for a consumer's use tax permit and report and pay use tax on their out-of-state purchases.

If persons who perform qualified production services also make retail sales (i.e., sales of release prints, dupe tapes, prop., etc.), they are required to hold seller's permits.

If a sufficient number of sales of equipment are made in a twelve month period, the seller will be required to hold a seller's permit by that reason alone even if no sales of film related items are made. (Regulation 1595(a)(1)(4).)

(6) Film Intermediates

Qualified production services include negative developing by the reverse processing method, the making of a work print from the developed negative, editing of the work print, interpositive prints, and internegatives. Charges for these services are not taxable.

(7) Tape to Film, Film to Tape and Tape to Tape Transfers

If transfers are performed for an intermediate purpose or to manufacture the answer print or master tape, the charges would not be taxable. If the transfers are made to manufacture release prints or duplicate tapes

for exhibition or broadcast, the charges would be taxable unless otherwise exempt (i.e., for resale, sale in interstate commerce, etc.).

(8) Trailers and Slide Films

Trailers are qualified motion pictures, whereas slide films are not.

(9) Special Effects, Titles and Credits

The person who actually performs the filming of special effects and credits is the one performing qualified production services. The sale of miniatures, artwork, etc., for use in special effects, titles and credits is taxable. The persons who perform the qualified production services may not purchase these items for resale and transfer title prior to use. The performers of qualified production services are consumers notwithstanding that title to such property is transferred.

(10) Series Episodes

Each episode in a television series is considered a separate qualified motion picture. 1/13/89; 5/29/96.

[375.0903](#) **Qualified Production Services.** The following are regarded as nontaxable qualified production services if performed on a qualified motion picture:

color corrections

off-line and on-line editing

audio laydowns and laybacks

sound mixing and sweetening

Foley and ADR recording

sound effects editing

sound duplications

videotape duplication (except for exhibition or broadcast)

film to tape transfers and related services (unless for the manufacture of release prints or duplicate tapes for exhibition or broadcast). 1/30/89; 5/29/96.

**375.0940 Ownership Interest.** Generally, the transfer of all or part of, or any interest in, a qualified motion picture is exempt from tax pursuant to section 6010.6(a)(2)(B) of the Revenue and Taxation Code and Sales and Use Tax Regulation 1529(b)(1)(C)2. A person owning less than a majority share of an entity which holds exploitation rights, as a result of a transfer, should be recognized as holding the rights indirectly or by affiliation. However, to avoid the problem of a person claiming indirect ownership of an entity by owning a single share of stock the following rules will apply:

(1) Any person with an ownership interest of 10% or more in an entity which holds exploitation rights, or any related entity (e.g., a subsidiary) 10% or more owned by such person, would be recognized as holding such rights indirectly or by affiliation.

(2) Any person with less than 10%, but 2% or more, of the ownership interest in an entity which holds exploitation rights, or any related entity less than 10%, but 2% or more, owned by such person, will be required to establish the facts and circumstances which demonstrate the person's ability to direct the policies or actions of such entity in order to be recognized as holding such rights indirectly or by affiliation.

(3) In the absence of a finding by the Board to the contrary, any person with less than a 2% ownership interest in an entity which holds the exploitation rights or any related entity less than 2% owned by such person will not qualify.

(4) In the case of partnerships, general partners would be recognized as holding any rights held by the partnership without regard to the actual level of their general partnership interest. Limited partners would be subject to the criteria spelled out in (1), (2) and (3) above. 5/2/91.

[375.0957](#) **Passage of Title—Qualified Production Services.** A taxpayer contracted with the United States government to perform certain work which constituted “qualified production services” under Regulation 1529. Thus, under Regulation 1529, the taxpayer is the consumer of property it purchases to provide such services. At issue is whether or not *Aerospace* overrides the regulation and permits the taxpayer to buy property for resale to the United States government.

*Aerospace* held that the resolution of this issue is determined by the clauses of the contract. Since the contract at issue does not contain a title clause passing title to overhead items to the United States prior to use, the taxpayer is the consumer of the items that it purchased to perform qualified production services as provided in Regulation 1529. Therefore, it may not purchase such property for resale to United States. 7/29/96.

[375.0970](#) **Post Production Services.** Sales tax does not apply to film-to-tape transfer services, editing, and other post production services performed on motion pictures. The person performing the service is the consumer of videotape stock used. On the other hand, duplication services which result in manufacturing release prints or duplicate tape for exhibition or broadcast are retail sales subject to tax. 11/10/89.

[375.0975](#) **Post Production Storage Equipment.** Film containers and supplies, such as film cans, film cores, videotape cases and audiotape cases, do not qualify as tangible personal property used primarily in teleproduction or postproduction activities as defined in Regulation 1532. Such items are not directly involved in the process of preserving or archiving nor are the products (e.g., film, tape, or other multimedia format) that result from such a process. Cans, cores, and cases are used in a step beyond the process of preserving or archiving as their purpose is to store the products resulting from the teleproduction or postproduction processes. Consequently, the sale or use of film cans, film cores, videotape cases and audiotape cases do not qualify for the partial exemption from tax authorized by Revenue and Taxation Code section 6378. 1/18/02.

[375.0980](#) **Post Production Work.** Under section 6010.6, tax does not apply to charges made by a post production sound studio for the following types of work, when such work qualifies as qualified production services performed on a qualified motion picture:

- (1) Post Production Mixing: Studio Time.
- (2) Audio Transfers:
  - (a) From one sound element to another.
  - (b) For mixing or editing purposes.
- (3) Film to Tape Transfer:
  - (a) Non-Air 35mm to  $\frac{3}{4}$  &  $\frac{1}{2}$  cassette.
  - (b) 35mm to 13 cassette used for our clients to obtain an okay from their clients.
- (4) Videotape to Videotape transfer:

(a) 3/43 to 1/23 to 3/43 used for editing or client approval.

(5) Videotape Laybacks: Non-Air.

(a) Transfer to 3/43 & 1/23 cassettes used by the studio's clients to obtain an okay from their clients.

(b) To 13 cassette masters and safety masters used to make dubs for air.

When persons perform qualified production services, they are consumers of film, tape, and other embodiment upon which sound, visual images, or graphics are created or recorded. Tax applies to the sale to consumers of such property, but tax does not apply to the transfer of the property to clients incidental to performance of the qualified production service.

If the above listed work is performed on a student film, it is subject to tax. Student films are not qualified motion pictures as defined in section 6010.6(b)(3). 7/12/89.

**375.0982 Producer of Video Series.** A taxpayer has been hired to produce a video series by a client. The video series, as well as all the video tape used in the creation of the series, are the copyrighted property of the taxpayer's client. The taxpayer will not be involved in any duplication or sale of the finished video series. The taxpayer will be involved in producing the master tapes, window dubs edited masters, and safety masters only. The client will be solely responsible for duplicating and distributing the series.

Since the video series is a "qualified motion picture" as defined in Regulation 1529(b)(3), the transfer of the masters is not a "sale" and is, therefore, not subject to the sales tax. Rather, the taxpayer is the consumer of the tangible personal property such as tape stock and equipment used in producing the video series and the sale of such property to the taxpayer is subject to tax. The client's sales of the release prints of the video series in this state would be subject to sales tax. 9/15/95.

**375.0984 Production Services.** Company A, a California manufacturer of sporting goods equipment, contracts with Company B, a California marketing communications company, to oversee the development and creation of concepts used in marketing and advertising Company A's products. Company B contracts with studios, film producers and others for various productions services including television commercials, promotional advertising spots, and video sales presentations. Company B also contracts with various vendors for creative services required for the production of the commercials. These services may include such items as: music, editing, photography, copyrighting, medium transfers, layout, and general production supervision and consulting. Company B invoices Company A for the filming and production expenses related to the creation of the commercials. In each instance, title to the master tape containing the commercial transfers to Company A.

Since title to the master tape containing the commercial transfers to Company A, it is assumed that B's contract is only to provide A with a master tape and that B contracts with the vendors on its own behalf. It is also assumed that the charges for items of tangible personal property are merely charges to B by vendors and which B passes on to A as part of the charge for the master tape.

Under Regulation 1529(b)(1)(C)(1), sales tax does not apply to B's transfer of the commercial to A when B's transfer is prior to the date that the commercial is exhibited or broadcast to its general audience. Tax applies to the sale of tangible personal property to B by the various vendors where the vendors do not transfer such property in connection with the performance of qualified production services. (Regulation 1529(b)(2).) 4/19/95.

**375.0985 Production and Videotaping of a Broadcast.** A taxpayer is retained by a client, a computer manufacturer, to produce a video broadcast which will be aired to the client's employees nationwide. The three and one-half hour video broadcast will announce the client's new computer products to the client's sales and support staff. The taxpayer will be the producer and director of the broadcast and, as such, is responsible for the broadcast's content and physically directing it "on line" during the airing.

The videotapes that the taxpayer prepares and transfers to the client qualify as qualified motion pictures and the taxpayer's charge is nontaxable. However, the exclusion from tax is not applicable to the sale of release prints or tapes for exhibition or broadcast. Therefore, if the taxpayer provides the client with duplicate tapes for exhibition or broadcast, tax applies to charges for such tapes. (Section 6010.6(c)(2).) 7/5/89.

**375.0992 Reconstruction, Restoration, and Presentation of Motion Picture Films.** A company whose business is generally the reconstruction, restoration, and preservation of motion picture films requested an opinion to the following types of transactions:

(1) Creation of a duplicate negative of an intermediary product (e.g., fine grain, safety stock, or backup master).

The copy is generally made from a positive lab master of the original negative of the film. The services involve no or minimal repair work. The backup masters are not intended for exhibition but for preservation. The backup master is necessary since original negatives are nitrate originals which disintegrate and become dust over time.

The creation of safety stock or backup masters is the performance of qualified production services. The transfer of the safety stock or backup masters to the customer is not a sale for purposes of the sales tax.

(2) The repair and restoration of films in deteriorated condition.

The company works from a positive lab master made from the original negative of the film. Services may include physical repair of original material, eliminating scratches on the film, reconstruction of an earlier version from different source materials, replacing portions of the film that may have been removed prior or subsequent to its original release, and processing of related sound track materials to produce a new and improved sound track. Such services may also include correcting the lighting of the film, which requires creative judgments on the part of technicians regarding the correct lighting and shading.

Restoration may involve the reconstruction of missing film or missing sound tracks. The company may insert replacement material or edit the existing film to regain continuity. The company may manufacture check prints or new first trial prints for the client to review the film and make aesthetic and technical judgments regarding the look and the sound of the reconstructed film. The end products are generally duplicate negatives, fine grains (intermediate master materials), library prints not intended for distribution, and occasionally, video tape masters. The end products are not release prints or tapes for exhibit or broadcast.

The creation and transfer of the duplicate negatives, fine grains (intermediate master materials), library prints, and videotape masters are qualified production services when such products are not release prints or tape for exhibition or broadcast. If the prints or tapes are of a quality suitable for exhibition or broadcast, the company's invoice to its customer should contain a statement indicating the customer's intended use of the films or tapes. 3/15/89.

**375.1000 Sale of Rights to Motion Picture.** Taxpayer A proposes to incorporate a new wholly-owned subsidiary B. "A" will sell to "B" all rights to one or more motion pictures that will have been released prior to the transfer. Simultaneously, "A" will enter into a distribution agreement with "B" pursuant to which "A" will license the distribution rights to the picture from "B". There are good business reasons for the transaction, unrelated to sales tax.

The transfer to the wholly-owned subsidiary would be a nontaxable transfer to an entity that is under control of the entity that held exploitation rights directly. (Regulation 1529(b)(1)(c).)

**375.1012 Sales Support and Training Videotape.** A production company contracts with an advertising agency to produce a sales support and training videotape for a client. The concept for the videotape is developed by the advertising agency after a series of meetings with its client. The agency provides the company with a script and provides appropriate creative direction. The production company provides

producing and directing services: contracts for talent, crew and equipment, and writing services. The company provides the agency with a finished master tape and the required number of copies of the final version, usually five to ten copies.

The sales support and training videotape is a “qualified motion picture,” with the production company being the consumer of the tangible personal property used in producing the videotape, except for the raw stock upon which the company records the duplicate tapes for exhibition or broadcast. Sales tax does not apply to the company’s charge for the master tape, but tax does apply to the charge for the duplicate copies produced for exhibition or broadcast. 3/15/89.

**375.1025 Services.** On-line editing, off-line editing, film-to-tape transfers, color correcting, creation of special effects or computer graphics are all “qualified production services” pursuant to Regulation 1529. The person performing any of these services is not making a sale, but rather is the consumer of the tangible personal property used in performing the service. 6/4/90.

**375.1028 Slide-Audio Tape Shows.** A slide-audio tape show is comprised of slides and a sound track tape that is fully synchronized to the slides. The audio tape controls the slide projector via a pulse to achieve the necessary synchronization. The end result is a coordinated slide show that includes narration and/or music as a complement to the pictorial presentation. A slide-audio tape show is not a motion picture under Regulation 1529 but instead is a series of still pictures shown in sequence and coordinated with an audio tape. Persons who produce slide-audio tape shows are retailers and the gross receipts from the sales of such shows are subject to tax including all production costs. 9/18/91.

**375.1030 Special Effects Shots by Subcontractor.** A vendor is hired by a motion picture producer to generate a special effects shot for a “qualified motion picture.” The vendor hires a freelance individual to perform the work which results in a piece of film negative (the effects shot) that the vendor then turns over to the producer for incorporation into the motion picture. The producer pays the vendor and the vendor pays the freelance individual. The vendor only retains a fraction of what the producer pays it as its fee.

When the freelance individual creates and transfers to the vendor the negative embodying the special effects shot, the freelance individual performs “qualified production services.” Sales tax does not apply to the freelance individual’s charge to the vendor. The freelance individual is the consumer of the property utilized in the performance of that service and sales of the property to the freelance individual are taxable. The vendor is also considered as performing “qualified production services” and its transfer of the film negative to the producer for use in the production of a qualified motion picture is not subject to the sales tax. 7/26/95.

**375.1035 Stock Shots.** A taxpayer has a library of videotapes and films. When a producer or editor has a need of a stock shot to insert in his/her program, they call the taxpayer who finds the appropriate shot(s) in their library. The shot(s) are then sent to the producer on a search reel which is later returned to the library. The taxpayer charges a “search fee” to find the appropriate shot and a fee for each second of footage the producer actually uses in their program.

In this case, the taxpayer is making a lease of the stock shots because the customer must return the film or tape. According to Regulation 1529, the production of stock shots is a qualified production service. The person producing the stock shot is a consumer and tax applies to the sale of the property used to produce the stock shot. The transfer of a stock shot, either by outright sale or lease, is not taxable. Therefore, tax does not apply to the charge for such leases. 11/3/89.

**375.1036 Stock Shot Services.** A taxpayer maintains a library of stock motion picture films for potential licensing and use to producers of motion pictures for commercial purposes, advertisers, etc. Producers contact the taxpayer with a request for a particular film or tape sequence. The taxpayer prepares a time-coded viewing cassette of the requested scenes. The viewing cassette is intended to be viewed only and is not commercially usable. A charge of \$100 is made for the cassette. Sometimes the viewing cassette is returned to the taxpayer and sometimes it is not returned. Sometimes the viewing cassette is obtained from an outside source if the particular film or scene is not in its library.

After the producer selects the specific frames from the reviewing cassette, the producer orders a working copy of the selected frames on a specific size film or tape. After receiving the order, taxpayer obtains a working copy from the lab or vault location which stores the master film. After receiving and editing the working copy, the producer orders a final element, a 16 millimeter negative which the taxpayer obtains from the lab.

After completion of the producer's final cut, the taxpayer issues a one time only license to the producer. The copyright license is made by the taxpayer prior to the date that the qualified motion picture of the producer is exhibited or broadcast to its general audience.

The producer usually returns the final element, the 16 millimeter negative, to the taxpayer. Sometimes, although rarely, the producer physically incorporates or splices the final element duplicate film into the producer's master film.

The charge made by the taxpayer in connection with the furnishing of stock shots, whether from its own library or from others, qualifies as "qualified production services" and is nontaxable. The fact that the producer does not return the work print or the time-coded viewing cassette is immaterial. 9/19/90.

**375.1041 Tape to Laser Disk Transfer.** A taxpayer transfers a motion picture contained on customer-furnished tape to a laser disk and returns the tape and disk to the customer. The customer uses the disk to test the quality of the tape and, if the tape is in good condition, the customer uses the tape to make copies of the motion picture on other disks that it resells. Since the laser disk is used by the customer only for testing purposes and not to manufacture release prints, the taxpayer's charges for transferring the motion picture to disk are nontaxable qualified production services. 5/21/99. (2000-1).

**375.1048 Television Commercials.** The transfer of the final production of a commercial on video tape to a client is the transfer of a "qualified motion picture" because it is a commercial produced, adapted, or altered for exploitation through a medium for the purpose of advertisement. Since the transfer of a qualified motion picture is not a "sale," the person who produces the commercial is the consumer of the materials that the person uses for the production of that qualified motion picture. Hence, tax applies to the sale of materials used to produce the qualified motion picture including the videotape which is transferred to the client. Tax does not apply to any charges made to the client for the qualified motion picture. On the other hand, when release prints are transferred to television stations, such transfers are sales subject to tax and the producers of the qualified motion picture may purchase those videotapes for resale. 9/5/96.

**375.1056 Television Commercial Encoding and Monitoring Services.** A company enables television advertisers to more accurately and efficiently determine whether the television commercials they have purchased have been broadcast at the time and in the form and market agreed to under a contract. The company has obtained from the FCC an exclusive right to use one line of the 525 that appear on a television screen. It has developed a device that encodes on this line a signature which is unique to each commercial. An independent party has been contracted to do the actual encoding on the master copy of the commercial using this company's equipment. The company has also developed a device that can monitor all television broadcasts in a given market and record exactly what commercials have been broadcast, the time they were broadcast, and the audio and visual quality of the commercial.

The described encoding procedures constitute fabrication labor but are excluded from the definition of a "sale" and "purchase" as qualified production services.

As for the monitoring service, the company will issue reports to the customers in the form of a computer printout or in the form of a data file transmitted over a communication line between computers. Under these facts, the true object of the contract with the customers is the rendering of a service. The company's charge for the monitoring service is not subject to tax even though some tangible personal property is transferred to the customers. 9/1/89.

**375.1065 Training Films.** Training films are qualified motion pictures. 3/13/89; 5/29/96.

**375.1075 Transfer of Dubs.** The transfer of master dubs, protection dubs, viewing dubs, archive dubs, and other such tapes that are not for exhibition or broadcast are considered the performance of qualified production services. Accordingly, tax does not apply to charges for such dubs. The person performing the service is the consumer of the materials used in making the dubs. However, tax would apply to the sale of dubs that are purchased for the purpose of exhibition or broadcast. 7/12/89.

**375.1095 Transfers of Master Reel and Submasters.** The transfer of a master reel containing a “qualified motion picture” produced for commercial purposes is not a taxable sale when the transfer is before the qualified motion picture is exhibited or broadcast to its general audience. Sales of “submasters” used as release prints (broadcast dubs or air dubs) are taxable. Transfers of “submasters” used as protection copies are not taxable. 5/29/90.

**375.1097 Transfer of Exploitation Rights.** Section 6010.6 (a)(2)(B) of the Sales and Use Tax Law excludes from the definition of sale, the transfer, under certain circumstances, of any interest in a motion picture which has been exhibited or broadcast.

The required circumstances are that the transfer be to a person holding either directly, indirectly, or by affiliation, any exploitation rights obtained prior to the date the motion picture is exhibited to its general audience. Indirectly refers to the holding of a controlling interest in an entity which holds exploitation rights; by affiliation refers to a transfer to an entity which is controlled by the person holding exploitation rights.

Transfers of rights between a parent company and multiple subsidiaries in which the parent has the majority interest are not sales if the parent holds exploitation rights. The transfer of rights from a partnership to the majority partner whose subsidiary held the exhibition license is also excluded from the definition of sale. 7/18/89.

**375.1100 Transfer of Qualified Motion Picture.** Company A purchases a qualified motion picture in California together with the right to distribute it. The qualified motion picture had been broadcast in theatres within the U.S. by the producer of the picture. Company A transfers the right to broadcast the picture to Company B, which adds Spanish subtitles to the picture for broadcasting in the Spanish language. Company B plans to distribute the picture with subtitles to local broadcasters.

The transfer from the producer to Company A would be a sale of tangible personal property. The “general audience” referred to in section 6010.6 is the general audience for whom the picture was originally produced. The charges for adding subtitles are nontaxable as charges for “qualified production services”. The producer's sale would be subject to sales tax as a retail sale unless Company A transfers the picture to Company B prior to making any use of the picture. In this case, the sale from the producer to A is a sale for resale and A's sale to B is a taxable retail sale.

If the producer transfers the right to broadcast the picture to Company A with the limitation that Company A add Spanish subtitles and broadcast only to Spanish speaking audiences, the transfer would also be subject to sales tax. The existence of the limitation would not make any difference.

If Company A transfers the right to broadcast the subtitled picture to distributors or broadcasters in Spain, the transfer of the film in California is subject to sales tax. The application of tax remains the same regardless of limitations imposed by the producer, or whether Company A or B transfers the right to broadcast the picture in Spain or Japan. 4/19/93.

**375.1290 Video and Audio Depositions.** Tax does not apply to the charge for the first copy of an audio tape or video tape of a deposition furnished to any party to the litigation. This is considered a service rather than a sale, and the party performing the taping service is the consumer of the tape. Tax does apply to the sale of additional copies of the tape to the parties to the litigation or any copies to persons who are not parties to the litigation. The person selling the copies may purchase for resale without payment of sales tax the raw tape that becomes the video tape sold. 7/30/90.

[375.1295](#) **Video Productions.** A taxpayer produces commercial videos, educational videos, promotional videos, and personal celebration (weddings, etc.) videos. The taxpayer also provides productions and post production services to clients. Its production includes “complete production” which includes shooting, editing, and duplication of the video tapes services.

Based on the information provided, the commercial videos, educational videos, and promotional videos produced are “qualified motion pictures” as defined in Regulation 1529. Thus, tax does not apply to the taxpayer’s transfer of the initial video tape produced for the client. Rather, the taxpayer is the consumer of, and tax applies to the sale to the taxpayer of, tangible personal property which is used in producing the videotape including the blank tape the taxpayer purchases from its vendor and transfers to its client. Tax does apply to the taxpayer’s sales of duplicate tapes.

On the other hand, the videotapes described as “personal celebration (weddings, etc.) videos” are not qualified motion pictures. Sales tax applies to the sale of those videotapes.

When the taxpayer performs production and post production work for clients in connection with the clients’ production of all or any part of a qualified motion picture, tax does not apply to the taxpayer’s charge, because the taxpayer performs “qualified production services” as defined in Regulation 1529. On the other hand, if the production and post production work is in connection with the production of a motion picture or videotape produced for private noncommercial use, tax applies to the taxpayer’s charge regardless of whether the taxpayer or the client provides the materials upon which the taxpayer performs the work. 06/11/96.

[375.1297](#) **Video Recorded Depositions.** Editing of certain video recorded depositions pursuant to California Civil Code of Procedure section 2025, et seq., including the transfer to another medium such as a laser disc, or the programming of playback instructions shall be treated the same as the initial videotaping. Tax does not apply to the charges for the first copy to each party to the action. 2/16/93.

[375.1300](#) **Videotape.** A person created a visual impact study concerning a proposed construction site. The final product transferred to the client consisted of still photographs and a videotape which the client will use for various presentations concerning the project.

The gross receipts from the sale of photographs and artwork are subject to sales tax. The videotape that was prepared is a “qualified motion picture”. The portion of the charge that represents the charge for the qualified motion picture is not subject to sales tax. 11/17/91.

[375.1303](#) **Video/TV Advertisement.** A taxpayer who is a design and marketing company contracts to produce a video/TV ad for a client. The taxpayer utilizes the services of its own employees and/or third parties to produce “raw film” (“work print”) for the ad. Included in the services performed by the taxpayer are shooting film by a camera crew and producing stock shots and sound and/or music recording. The taxpayer then ships the final version of the advertisement to the television or cable entity which will run it. No transfer of possession or title to any other tangible personal property is made by the taxpayer to the client or to the television or cable entity. In some instances, the client may directly purchase the advertising placement from the media or in some instances the taxpayer may purchase the placements.

Under Regulation 1529(b)(2)(A), the taxpayer or the third party is performing qualified production services and, as such, it is the consumer of any tangible personal property used in the performance of the services. Sales or use tax applies to purchases of tangible personal property used by the taxpayer or the third party in performing qualified production services. Since the advertisement is a qualified motion picture, tax does not apply to taxpayer’s charges to the client for a single final version of the ad. However, any charges for the manufacturing of copies for exhibition to the public are subject to tax because such copies are defined as “release prints” under Regulation 1529(d)(11). 11/19/96.

[375.1315](#) **Videotape Production—Focus Group.** A production company contracts to videotape a focus group, comprised of 10–12 members of the general public who are asked to provide input on new products,

new advertising campaigns, or new services. The production company provides all necessary equipment and personnel for the taping but is not involved in running the focus group. The focus group is led by a moderator who is hired by the company whose product or service is being evaluated. The transfer of the video to the customer takes place prior to the time the videos are exhibited or broadcast to its general audience. The videos are made for the analysis of consumer reaction to proposed new products, services, or advertising campaigns and, thus, are made for “commercial, advertising, and promotional purposes.”

Since these productions are produced for the purposes stated above and are transferred to the customer prior to their exhibition or broadcast to the intended audience, they meet the definition of “qualified motion picture” for the purposes of Regulation 1529. The transfer of the videotape to the customer is not taxable and sales or use tax does not apply to the charge for the videotape. However, the production company (producer) is the consumer of tangible personal property consumed in the production of the videotape and sales or use tax applies to purchases of tangible personal property consumed in the production of the videotapes. 12/4/95; 1/23/96.

**375.1317 Videotape Production—Mock Trials.** Videotapes are made of mock trials in one of two formats, either live presentation or prerecorded for presentation to the mock jury. When the mock trial is a live presentation, the production company videotapes the entire mock trial. In the instances when the trial is prerecorded for jury presentation, the production company only videotapes the mock jury deliberation. The production company provides its own equipment and personnel.

If the intended use of the mock trial videotapes are for instructional purposes, for example, the mock trial is made in conjunction with a class on courtroom techniques or a class on jury analysis, then they would be considered “qualified motion pictures.” However, if the tapes are produced for distribution to the participants as a record of their participation, then these productions would appear to be made for private or noncommercial use and would not be considered “qualified motion pictures.”

Thus, if these videos are produced for commercial purposes and are delivered to the customer prior to their exhibition or broadcast to the intended audience, they meet the definition of “qualified motion pictures” for purposes of Regulation 1529. The producer of videotapes considered to be “qualified motion pictures” is the consumer of tangible personal property consumed in the production of the videotapes and sales or use tax applies to purchases of tangible personal property consumed in the production of the videotapes. The transfer of the tape to the customer is not subject to sales or use tax. 12/4/95.

**375.1320 Videotape Productions.** A video services operations requested interpretation of the application of sales tax to charges in connection with producing videotapes:

- (1) The operator is hired with a camera to shoot a function and to furnish a VHS dub.

If the videotape is a “qualified motion picture” per Regulation 1529, tax does not apply to the charge for the initial videotape provided to the client. If it is not a “qualified motion picture,” the entire charge is subject to tax.

- (2) A client asked for a commercial to be re-edited, after which the client receives a VHS dub.

The performance of editing work on a qualified motion picture is nontaxable as a charge for qualified production services.

- (3) The operator is hired to shoot and edit a promotional video and to give a VHS copy.

Tax does not apply to the charge. However, tax applies to the sale of the blank tape to the operator.

- (4) The operator is hired to consult on an edit for a client.

If the operator merely consults with a client, without performing any labor which results in the production, fabrication, or processing of tangible personal property, tax does not apply to the charge for consultation whether the videotape is a qualified motion picture or not.

(5) The operator shoots news for a TV station and gives them the original tape.

The news tape would be a qualified motion picture. Tax does not apply to the charge to the television station for the tape. 4/27/92.

[375.1350](#) **Videotaping.** After the Oakland fire, an audio visual consultant videotaped properties for a private firm and for the city of Oakland. The videotape was provided to the city to document the cleanup work performed after the fire and to document to the federal government and to the public how the cleanup funds were expended.

Based on this information and since the videotape was produced for a commercial or industrial purpose, the charge for the videotape is a nontaxable charge for a qualified motion picture. The consultant is the consumer of and should report and pay tax on the cost of the tangible personal property consumed in the production of the videotape. 8/6/92.

**375.1370 Videotaping Litigation Related Projects.** Annotation 515.0075 (8/27/87), Depositions, applies only to the videotaping of depositions, a copy of which must be furnished under Code of Civil Procedure section 2025. Videotaping of other projects related to litigation, but which are not depositions so required, are taxable when sold at retail in California as they do not meet the definition of “qualified motion picture” as contained in Sales and Use Tax Law section 6010.6. 5/16/89.

**375.1380 Videotaping of Weddings, Parties, Personal Property, etc.** Making videotapes of weddings, parties, personal property or children for identification purposes, would not qualify as qualified motion pictures under Regulation 1529 (b)(1)(B). Thus, tax applies to charges for making such videotapes. 11/28/88.