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May 22, 2009

VIA FACSIMILE

Colleen Berwick
Franchise Tax Board
P.O. Box 1720
Sacramento, CA 95741-1720

Re: Regulation 25137-8

Dear Ms. Berwick:

This letter is presented on behalf of Pillsbury Winthrop Shaw Pittman LLP. In the Interested Parties Meeting held on May 15, 2009 in connection with Regulation 25137-8, we presented oral comments regarding the Explanation of Proposed Draft of Regulation Section 25137-8 ("Explanation"). We indicated that we would provide those comments and suggested revisions to the Explanation in writing.

1. Explanation No. 9. This paragraph should be revised to specifically note that certain taxpayers do not share staff's belief that the inclusion of advertising revenue as a gross receipt is not a substantive change to the existing regulation. Given that the proposed changes to the regulation are prospective in nature, we submit that the language should be made clear in this regard. We would suggest substituting the following for the second and third sentences of that paragraph:

"While there are substantive changes from the existing regulation (specifically identifying distributors as a part of the industry covered by this regulation, redefining 'film,' and identifying new technology used by the industry since the prior regulation was adopted), staff does not believe that inclusion of advertising revenue as a gross receipt is a substantive change to the existing regulation. Certain taxpayers do not agree with staff and assert that the inclusion of advertising revenue as a gross receipt is a substantive change to the existing regulation."

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2. Explanation No. 5. Similar to our comments regarding Explanation No. 9 above, this paragraph should be revised to make it clear that the addition of the words "gross receipts from advertising revenue" is viewed by certain taxpayers as a substantive change to the existing regulation. We would suggest substituting the following for the last sentence of that paragraph:

"It is staff's belief that this language makes no substantive change to the existing regulation. Certain taxpayers do not agree with staff and assert that the inclusion of advertising revenue as a gross receipt is a substantive change to the existing regulation."

3. Explanation No. 6. Again, similar to our comments regarding Explanation Nos. 5 and 9 above, this paragraph should be revised to make it clear that the specific inclusion of advertising revenue in gross receipts is viewed by certain taxpayers as a substantive change to the existing regulation. We would support substituting the following for the last sentence of that paragraph:

"It is staff's belief that this language makes no substantive change to the existing regulation. Certain taxpayers do not agree with staff and assert that the inclusion of advertising revenue as a gross receipt is a substantive change to the existing regulation."

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Jeffrey M. Vecely

cc: Ms. Annie H. Huang

May 22, 2009

Ms. Carole Rouin
California Franchise Tax Board
Legal Division
P.O. Box 1720
Rancho Cordova, CA 95741-1720

Re: Proposed Amendments to California Reg. Sec. 25137-8

Dear Ms. Rouin:

Please find as Exhibit A California Regulation Section 25137-8 ("Regulation") with the amendments proposed by the Franchise Tax Board (FTB). On behalf of Comcast, we have also included additional proposed changes, as highlighted, to clarify that the FTB amendments to the Regulation were not intended to include cable television services.

If you have any questions regarding the proposed changes please don't hesitate to call Tom Donnelly at Comcast at (215) 981-7557 or me at (202) 383-0936.

Best Regards,

Michele Borens

Exhibit A

Section 25137-8 is amended to read:

§ 25137-8. Motion Picture and Television Film Producers, Distributors, and Television Networks - Apportionment of Income.

(a) In General. When a business entity in the business of producing or distributing motion picture, film, or television programming, whether broadcast or telecast through the public airwaves, by cable, direct or indirect satellite transmission, or any other means of communication, either through a network (including owned and affiliated stations) or through an affiliated, unaffiliated, or independent television broadcasting station has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this regulation. **This regulation does not apply to a business entity which earns receipts from the provision of cable television services.**

(b) Definitions.

For purposes of this regulation **only**, the following definitions shall apply.

(1) "Film" means the physical embodiment of a play, story, or other literary, commercial, educational, or artistic work, produced for telecast, as a motion picture, video tape, disc, or any other type of format or medium. A "film" is deemed to be tangible personal property. "Film" does not include video cassettes or discs sold for personal use.

(2) Each episode of a series of films produced for television shall constitute a separate film notwithstanding that the series relates to the same principal subject and is produced during one or more television seasons.

(3) A "producer" is a business entity which develops and creates motion picture, television, or web-based content.

(4) A "distributor" is a business entity which, upon completion of production, exhibits motion picture, film, television, or web-based programs, and develops and implements the marketing campaign, including but not limited to advertising. A distributor does not include theaters or other business entities, to the extent they provide ~~cable or~~ satellite transmission services.

(5) "Release date" means the date on which a film is placed in service. A film is placed in service when it is first telecast or exhibited to the primary audience for which the film was created. Thus, a motion picture theater film is placed in service when it is first publicly exhibited for entertainment purposes and an educational film is placed in service when it is first exhibited for instructional purposes. Each episode of a television series is placed in service when it is first telecast. A film is not placed in service merely because it

is completed and therefore in a condition or state of readiness and availability for telecast or exhibition, or merely because it is telecast or exhibited to prospective exhibitors, sponsors, or purchasers, or it is shown in a "sneak preview" before a select audience.

(6) "Rent" shall include license fees for the exhibition or telecast of films.

(7) "Tangible personal property" used in the business, whether owned or rented, shall include but is not limited to sets, props, wardrobes, and other similar equipment.

(8) A "subscriber" to a subscription television telecaster is the individual residence or other outlet which is the ultimate recipient of the transmission.

(9) "Telecast" means the transmission of an electronic signal or other signal by radiowaves or microwaves or by wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions directly or indirectly to viewers or subscribers, or by any other means of communication.

(10) "Advertising revenue" includes advertising from all sources, including but not limited to online advertisements, embedded advertisements, product placement, barter transactions, and the sale of air time used for advertising purposes.

(11) "Cable television services" means the transmission to customers or subscribers of video programming, or other programming service over a cable system directly or indirectly owned or controlled by the business entity or any unitary affiliate of the business entity.

(c) Apportionment of Business Income. The property, payroll, and sales factor of the apportionment formula for motion picture and television film producers, distributors and television networks shall be computed pursuant to Sections 25128 through 25137 of the Revenue and Taxation Code and the regulations adopted pursuant thereto except as provided in this regulation.

(1) Property Factor.

(A) In General.

(i) In the case of rented studios, the net annual rental rate shall include only the amount of the basic or flat rental charge by the studio for the use of a stage and other permanent equipment such as sound recording equipment rented from other sources or from the studio not covered in the basic or flat rental charge and used for one week or longer (even though rented on a day-to-day basis) shall be included. Lump-sum net rental payments for a period which encompasses more than a single income year shall be assigned ratably over the rental period.

(ii) The value of the films shall:

(I) be the original cost of producing the film as determined for federal income tax purposes, before any adjustment for federal credits which have not been claimed for state purposes, and

(II) include talent salaries.

(iii) The value of a film shall not be included in the property factor until its release date.

(iv) Video cassettes and discs shall be included in the property factor at their inventory cost as shown in the taxpayer's books and records.

(B) Denominator.

(i) All real property and tangible property (other than films) whether owned or rented, which is used in the business, shall be included in the denominator.

(ii) Films, other than films the cost of which is expensed for California tax purpose at the time of production, shall be included in the property factor at original cost for twelve years beginning with the release date.

(iii) Films of a topical nature including news or current event programs, sporting events or interview shows, the cost of which is expensed for California tax purposes at the time of production, shall be included in the property factor at original cost for one year beginning with the release date.

(iv) All other films, other than those included in the denominator under clause (ii) or (iii) of this subparagraph, shall be aggregated and treated as a single film property which shall be included in the property factor. Such property shall be valued at eight times the gross receipts generated during the income year from the theater distribution, network television, television syndication, cable or satellite television, subscription and the marketing of video cassettes and discs through licensing or direct selling, or similar receipts, but in no event in an amount greater than the total original cost of such aggregated film property.

(C) Numerator.

(i) If tangible personal property (other than films) is located or used in this state for part of the income year, its value shall be determined by applying the ratio which the number of days the property is located or used in this state bears to the total number of days such property was owned or rented during the income year.

(ii) The total value of films that are included in the property factor under subparagraph (B) of paragraph (1) of this subsection shall be attributed to this state in the same ratio in which the total California receipts from such films as determined in subparagraphs (A), (B), and (C) of paragraph (3) of this subsection pertaining to the sales factor bears to the total of such receipts everywhere.

(2) Payroll Factor.

(A) In General.

(i) The denominator shall include all compensation paid to employees during the income years, including talent salaries. Residual and profit participation payments constitute compensation paid to employees.

(ii) The amount paid to a corporation for providing the services of an actor or director who is an employee of such corporation or for loaning the services of an actor or director who is under contract with such corporation shall, if substantial, be included in the producer's payroll factor as if the amount paid was compensation paid to an employee of the producer.

(B) Numerator. Compensation of employees in the production of a film on location shall be attributed to the state where the services are or were performed. Compensation of all other employees shall be governed by Regulations 25132 and 25133.

(3) Sales Factor.

(A) The numerator shall include all gross receipts derived by the taxpayer from sources within this state including, but not limited to, the following:

(i) Gross receipts, including advertising revenue, from films in release to theaters and television stations located in this state.

(ii) Gross receipts, including advertising revenue, from films in release to or by a television network for network telecast shall be attributed to this state in the ratio that the audience for such network stations (owned and affiliated) located in California bears to the total audience for all such network stations (owned and affiliated) everywhere. The audience shall be determined by rate card values published annually in the *Television & Cable Factbook*, Vol. I, "Stations Volume," Television Digest, Inc., Washington, D.C., if available, or by other published market surveys, or if none is available, by population data published by the U.S. Bureau of Census provided that the source selected is consistently used from year to year for that purpose.

(iii) Gross receipts, including advertising revenue, from films in release to subscription television telecasters shall be attributed to this state in the ratio that the subscribers for such telecaster location in California bears to the total subscribers of such telecaster everywhere. If the number of subscribers cannot be determined accurately from records maintained by the taxpayer, the ratio shall be determined on the basis of the applicable year's statistics on subscribers published in *Cable Vision*, International Thompson Communication Inc., Denver, Colorado, if available, or by other published market surveys, or, if none is available, by population data published by the U.S. Bureau of the

Census for all states in which the telecaster has subscribers, provided that the source selected is consistently used from year to year for that purpose.

(iv) Receipts from sales and rentals, licensing or other disposition of video cassettes and discs or any other format or medium intended for personal use shall be included in the numerator of the sales factor as provided in Regulations 25135 and 25136.

(d) This regulation applies to taxable years beginning on and after January 1, 2010 [or January 1 of the tax year of the adoption of the regulatory changes.]

Note: Authority cited: Section 2642219503, Revenue and Taxation Code.

Reference: Section 25137, Revenue and Taxation Code.

Rouin.Carole

From: Eric Miethke [EMiethke@nmgovlaw.com]
Sent: Friday, May 15, 2009 9:38 AM
To: Rouin.Carole
Subject: Tweaking of "distributor"

A "distributor is a business entity which, upon completion of production licenses a film for exhibition by a related or unrelated third party. The distributor also usually, though not always, develops and funds the campaign to market the film. A theatre which exhibits the film is not a distributor. A producer may also be a distributor if it licenses its own films or those of others for exhibition