
REQUEST LETTER

05-002

NAME
ADDRESS

Re: Request for Advisory Opinion

To the Commissioner:

On behalf of my client, NAME, we are requesting your opinion on the matter of "Legal Video Services." Please be advised that we have reviewed previous Private Letter Rulings (02-031 and 96-154, copies attached hereto) which are related to this matter but find, due to changes in the Federal and State Rules of Civil Procedure, that there may be a need to reconsider these prior rulings as they relate to legal video services.

Utah State Rules of Civil Procedure, Rule 30(B)(2) (a copy has been attached) which relates to depositions upon oral examination, states that: "A party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording."

This ruling makes recording of testimony by "sound" or by "sound-and-visual" an actual legal record, on par with written testimony recorded steno graphically. In fact, my client has, on many occasions, video taped testimony when there has been no stenographer present. My client is employed by court reporting agencies to produce the record exactly as they employ stenographic reporters to produce the record. The parties involved determine which respective format (video or paper) is desired. Based on this view under Rule 30(B)(2), the only difference in the end product of a recorded deposition is whether the recorded testimony is provided to the parties on "paper" or on "plastic tape or disk." Many times attorneys will request that both a stenographer and a legal videographer be present.

My client is a Certified Legal Videographer which requires passing the same written test which must be taken to become a Certified Legal Stenographer. These tests and certifications are administered and awarded by the National Court Reporters Association. Utah State Tax Commission.

Accordingly, my client is required to have the same legal knowledge and skill set required of certified legal stenographers.

My client subcontracts with court reporting firms. He provides the deposition record (as recorded on video tape or disk) to the court reporting firms which in turn provide the legal record) provided by my client are exempt from sales taxation as are the legal stenographic services and paper transcript which are provided by stenographers.

We appreciate your time and consideration on this matter. Should you have any questions, please

contact me at PHONE.

Sincerely,

NAME
ADDRESS

RESPONSE LETTER

October 21, 2005

NAME
ADDRESS

RE: Private Letter Ruling Request – 05-002

Dear NAME,

We received your request regarding sales tax issues related to video records of legal proceedings created by your client, NAME (“taxpayer”), certified by the National Court Reporters Association as a Certified Legal Videographer. You stated you had reviewed two previous private letter rulings (PLR’s) on the subject (02-031 and 96-154). However, you feel changes in both federal and Utah rules of civil procedure warrant a different outcome. You also assert that “the only difference in the end product of a recorded deposition is whether the recorded testimony is provided to the parties on ‘paper’ or on ‘plastic tape or disk.’”

We begin by examining licensing or other certification requirements for court video recording services and the rules of civil procedure to which you referred. Under Utah Rules of Civil Procedure 30 (B), the party taking a deposition may select the method of recording it, unless a court orders otherwise. The methods include sound, sound-and-visual, and stenographic means. The party taking the deposition is required to bear the costs of the recording.

Utah Code Ann. §58-74-102(3) defines a certified court reporter as a shorthand reporter certified by the National Court Reporters Association or a voice reporter certified by the National Verbatim Reporters Association. The statute does not refer to or define Certified Legal Videographers. A search of the Division of Occupational and Professional Licensing (DOPL) database does not produce verification of a license of any kind for your client.

A telephone call to DOPL yielded the following information. First, your client does not have a license as a certified shorthand or voice reporter. Second, the making of a video record of a proceeding is not presently an activity for which one can be licensed under Utah law.

A telephone call to the National Court Reporters Association (NCRA) revealed that your client is a Certified Legal Video Specialist. The test administered to receive that certification, however, is not the same test as the test administered to Registered Professional Reporters. Additionally, the NCRA said video is used in connection with a certified court reporter making a transcript. The person with whom we spoke was not aware of a circumstance where only video was employed to make a record. If this

information, as reported to us, is not correct, please feel free to contact us with the correct information and supporting documentation.

Based on this research, we do not believe that the license or certification requirements under DOPL or NCRA apply specifically to your client, nor do we believe that those provisions affect our position. Furthermore, we do not believe the provisions in Rule 30 (B) that you cited affect our position. We believe that the videotape differs substantially from the service of transcribing the words of a witness to the printed page. The difference in the skill sets necessary to render the services is reflected in the different tests and certifications provided by national organizations, and the fact that one need not have a license issued by the State of Utah to be a videographer.

In addition, we have researched other states to determine if there is a general consensus on the treatment of court video records. We find that other jurisdictions are split on whether the sale of the video record is the sale of tangible personal property. Kansas, Missouri, Iowa, Rhode Island and Texas have administratively determined that the sales of videotaped depositions are the sale of tangible personal property and are subject to sales tax. To our knowledge, neither the Rhode Island courts nor its Legislature have altered the administrative decision. A Texas statute passed after the Texas Comptroller issued his decision has provided an exemption. There is no statutory exemption in Utah.

California has determined there is no sales tax due on the first copy provided to parties to the litigation. Florida has reached a similar conclusion, noting that the videographer is the consumer of the videotape, and must pay sales tax on the purchase price. New Jersey's decision is similar to Florida's. Additionally, New Jersey noted that if the cost of the service is not separately stated, the entire amount charged is subject to sales tax. After our research into the policies of other states, we find no reason to change our current policy.

In PLR 02-031, which you have cited, the Commission noted that transcription services have historically been exempted from sales tax. We reiterate that the reason for this is that the object of the transaction is the court reporter's service itself, more than the physical record. A written transcript provides a "cold record" containing a verbatim reproduction of the words spoken by a witness. It is the service of taking down and transcribing those words that is the true object of the transaction. This is consistent with our general position on legal documents themselves. That is, it is the legal service provided by the attorney that is the essence of the transaction, not the actual physical document.

A critical distinction is that the skills and abilities required for recording a video differ from those of someone transcribing a court hearing. We continue to make this distinction. We also find that the more stringent training and licensing requirements suggest a stronger emphasis on the service aspect of the court reporter to create this transcription, rather than the report itself.

In contrast, as we noted in PLR 02-031, the object of the transaction for purchasing videotapes, whether legal in nature or not, such as wedding videos, is the tape itself or the tangible personal property, not the service provided by the videographer. Regardless of any professional training or certification requirements, we continue to hold that the very differences between stenographing and videographing for legal proceedings are greater than the similarities between videotapes for any purpose, whether legal or general commercial. Consequently, even should professional training and licensing requirements for court videographic recordings become more stringent in the future, we would still consider the nature of transaction. That is, whether a buyer of a videotaped record purchasing tangible personal property (the tape) or a service. We believe it would have to be established that court videography is sufficiently unique from other types of videography to warrant different treatment for sales tax purposes. At the same time, it would have to be shown that the service aspect of court video recording is sufficiently similar to providing a written transcription so as to warrant similar tax treatment.

In summary, after reviewing your request, we affirm the decision in Private Letter Ruling 02-031. The sale of a videotape of a deposition is the sale of tangible personal property and is subject to sales tax, unless it is otherwise exempted on the same bases as other sales of tangible personal property.

Should the facts be different from those represented in this letter, our opinion may change accordingly. Thank you for your inquiry into this matter.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/SR
05-002