



STATE BOARD OF EQUALIZATION

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February 17, 1995

X-----

Dear X-----,

This is in reply to your December 1, 1994 letter regarding the application of sales tax to charges by your computerized photograph restoration business.

You noted that page 6 of Pamphlet No. 68, Tax Tips for Photographers, Photo Finishers and Film Processing Laboratories, discusses retouching of customer-owned prints. The pamphlet states that, if the retouching is to improve the quality of the print, the charge is taxable. On the other hand, tax does not apply if the retouching is only for the purpose of repairing and restoring.

You note you understand this to mean that, if you retouch a photograph that has some dust spots on it, or some other defect that occurred during the printing process, then this is improving the print and is taxable. If you retouch spots, cracks, stains, or other damage that occurred after the printing process, you are bringing the photo back to its original condition, and your charge is not taxable. Your general analysis is correct. If a photographer retouches a new photograph for a customer, the charge is includible in the photographer's taxable gross receipts, because the charge is for labor to prepare the photograph for sale. If that processing is done on a customer's new photograph, the charge is subject to tax as part of the labor to complete the finished photograph.

If a customer has a used photograph which the photographer merely repairs or restores, the photographer's charge for the repair labor is nontaxable. Of course, this is the application of tax only when the photographer performs repair work on the customer's damaged photograph and returns that same photograph to the customer. If the photographer instead creates a new copy of the photograph for the customer, tax applies to the entire charge. Enclosed is a copy of Sales and Use Tax Regulation 1526, Producing, Fabricating, and Processing Property Furnished by Customers--General Rules, for your further information.

You note an example where a customer provides you with a photograph of his wife in which one of his wife's eyes was closed, and he wanted it to look open. You created a computer-generated image, opened the eye, and printed the image to photographic film. You used the negative to make a finished print to sell to the customer. In that case, tax applies to your entire charge, including the charge for labor to alter the customer's print, because you did not merely repair the customer's defective print; rather, you sold a new print.

Your letter goes on to state that, to make the computer generated images, you send the computer file on disk to an out-of-state company which creates a negative and sends the negative to you. You then send the negative to a photo lab to make the finished print. You pay the photo lab for its charges. We assume that the print you purchase from the photo lab is the final product you sell to your customer. As noted above, tax applies to the entire charge you make to the customer for the print.

Tax does not apply to the sale of tangible personal property to a person who purchases the property for resale or to incorporate as an ingredient or component part of the property sold. (Sales and Use Tax Reg. 1525, Property Used In Manufacturing.) Therefore, when you obtain a seller's permit, you may issue a resale certificate to the photo lab in order to purchase the print ex tax. On the other hand, you may not purchase for resale any tangible personal property which you use to manufacture the final product. For example, tax applies to the sale to you of your equipment, computer disks, and the negative you purchase from the out-of-state vendor. If the out-of-state vendor of the negative is not registered to collect California use tax from you, you are responsible for reporting the cost of the negative on line 2 of your Sales and Use Tax Return. There is a discussion of "Purchases by Photographers" on page 3 of the enclosed revised edition of Pamphlet No. 68.

As you noted, there is an exemption from sales tax for certain sales in interstate commerce. Revenue and Taxation Code section 6396 provides:

"There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property which, pursuant to the contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer by means of: (a) facilities operated by the retailer, or (b) delivery by the retailer to a carrier, customs broker or forwarding agent, whether hired by the purchaser or not, for shipment to such out-of-state point.

"For purposes of this section, the term 'carrier' shall mean a person or firm engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers. The term 'forwarding agent' shall mean a person or firm engaged in the business of preparing property for shipment or arranging for its shipment."

Enclosed is a copy of Sales and Use Tax Regulation 1620 for your further information. Tax applies to your sale of a photograph in this state to an out-of-state customer. Tax applies not apply to your sale of a photograph which, pursuant to your contract, you are required to ship and do ship outside this state to your out-of-state customer. However, tax does apply to the use by

you of the negative you purchase from the out-of-state vendor regardless that you make an exempt sale of the final product in interstate commerce.

We hope this answers your questions; however, if you need further information feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Staff Counsel

RLD:sr



STATE BOARD OF EQUALIZATION

State Board of Equalization
Legal Division
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Sacramento, CA 94279-0001

Dear Sir or Madam:

I am writing to you about a photo restoration business I am conducting. I have been told by some people at my local State Board of Equalization office that I do not qualify for and do not need a resale permit. I have been told by others that I do need one and must collect sales tax. They seem to be somewhat confused about the tax laws covering my line of work. It seems that it takes a tax lawyer who moonlights as a photographer to understand the whole issue. Because we do computerized photo restoration things are a little different. I am trying to verify what I must collect sales and use taxes on. Most of my business is done through the mail with out of state customers. I will try to explain my understanding of the different tax codes in question. If I am misunderstanding something please explain how it applies to my computerized restoration business and how the code applies to the traditional photo restoration industry.

On page six of pamphlet #68 Tax tips for photographers etc. it talks about retouching customer owned prints. If done to improve the quality of the print it is taxable, but if done only to restore or repair the print then it isn't taxable. I find the phrase "to improve the quality of the print" to be somewhat vague and I am not sure what it means. After all any retouching improves the quality of the print. I take this phrase to mean that if I retouch a photo that has some dust spots on it or some other defect that occurred during the printing process, then this is improving the print and is taxable. If I am retouching spots, cracks, stains or other damage that occurred after the printing process, then I am bringing the photo back to its original condition and this is restoring or repairing the photo and is not taxable.

Some jobs we do are not in any of the categories listed. It is what we call an alteration. The closest thing I can find in the book is tinting or coloring a customer owned print. For example we were given a photo by a customer. The photo was of his dead wife. In the photo one of her eyes was closed and he wanted it to be opened up. We opened her eye in the computer. This gave us a computer file which we had printed to photographic film. We used this new negative to make a finished print. In the new print she has both eyes open. I would expect to charge tax for the new negative and print but not for the labor to alter the customer owned print.

To make the computer generated negative we send the computer file on disk to a company out of state. They charge us to print the image onto film and send us a negative. We then send this

negative to a photo lab to have the finished print made for us and we pay the photo lab for all print charges. We pass the cost of the negative and the print on to the customer.

Page seven states that one exemption is "sales in interstate commerce". I read this to mean that all of our sales to out of state customers are not taxable. Page six talks about inter negatives being taxable even for out of state customers. Most of the time we don't use inter negatives so this usually doesn't apply to us. If we have a print that we can't scan because of size or other reasons, we have an inter negative made and work from that inter negative. This inter negative is taxable for both out of state and local customers. The final negative we use to make the final prints from would be taxable for a local customer because it does not become part of the final product. It would not be taxable to an out of state customer because it is not an inter negative. The final print made for the local customer would be taxable because prints are taxable. The final print made for the out of state customer would not be taxable.

So to summarize; I understand this book to state that all of our sales to out of state customers are not taxable except for the cost of inter negatives. If we had a job that required the use of an inter negative then the cost of the inter negative would be taxable for both local and out of state customers. For a local customer our charges to restore or alter the photo are not taxable. The cost of the new negative and the final print are taxable and any proofs made are taxable.

If you don't understand my ramblings or if you need more information, please call me at X-----
- and ask for my technical advisor X----- and he will answer any question you may have.