



## STATE BOARD OF EQUALIZATION

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November 4, 1993

Re: X-----

Dear X-----,

This is in response to your letter of July 2, 1993 in which you request clarification of the application to tax in specified circumstances. Each of your examples is recited below followed by our analysis.

#### Sales and Use Tax Law Generally

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. Although the sales tax is imposed upon the retailer, the retailer may collect sales tax reimbursement (usually itemized on the invoice as "sales tax") from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1.) When the sales tax does not apply, Revenue and Taxation Code section 6201 imposes a use tax on the storage, use or other consumption of tangible personal property in this state. (Rev. & Tax. Code § 6401.)

A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. (Rev. & Tax. Code § 6007.) A purchaser who purchases property for resale in his or her regular course of business may issue the seller a resale certificate. If timely taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds a California seller's permit, the resale certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax. (Regulation 1668 (copy enclosed).)

#### Application of Tax to Specific Transactions

"(a) Our customer selects a photo, makes a reproduction of it, and incorporates the reproduction into a product that he then sells to his client. My understanding in this case is that we cannot accept a resale certificate because our customer is considered to have 'consumed' our photo rather than resold it. Is this interpretation correct?"

Generally, tax applies to sales of photographs. (Regulation 1528 (copy enclosed).) If the actual photograph purchased by your customer will be resold to the client prior to any use by your customer or if it will be incorporated into the property produced by your customer who then resells that property, then your customer can purchase the property ex-tax by issuing a resale certificate. If, instead, the customer makes any use of the photos prior to resale, such as copying the photographs, your customer is using the photos and may not purchase them for resale. Your

facts state the customer reproduces, or uses, the photo prior to reselling it; thus, your interpretation is correct.

"(b). Our customer selects a photo and purchases the reproduction rights from us but does not actually reproduce it. Instead, he charges his clients a fee for his services which include providing his client with our photo. His client then reproduces the photo. In this case, may we accept a resale certificate from our customer?"

Under these facts, you are selling the photo to your client who then resells it prior to any use. In this case, you may accept a resale certificate.

"(c) Our customer is looking for a photo for his client to reproduce. However, suppose our customer does not find the right photo and instead of billing him for reproduction rights, we instead bill him a service fee to cover our research costs. Our customer charges his client an amount which includes what he had to pay for our service fee. Can we accept a resale certificate from our customer?"

A resale certificate is provided by the purchaser where the purchaser intends to resell the tangible personal property acquired. Under these facts, you have not sold any tangible personal property to your customer and therefore no tax applies to your research charge. Since you are not selling tangible personal property to your customer, there is no reason for your customer to provide you with a resale certificate even though the customer may include this charge in the bill to his client.

If you have any further questions, please do not hesitate to write again.

Sincerely,

Ms. Sukhwinder K. Dhanda  
Staff Counsel

SKD:plh  
Enclosures – Regulations 1528 and 1668

Bc: Out of State Administrator  
Out of State New York Area Office - OHB