



STATE BOARD OF EQUALIZATION

November 6, 1957

Dear Mr.

We base our opinion regarding your claim for refund of May 23, 1957, on the following statement of facts.

You are in the business of taking photos of newsworthy events. We assume you use your own photographic equipment and you state that you purchase all film on a tax paid basis.

You are paid a weekly retainer to be on call for two newspapers. If an assignment is filled for these papers or other papers, you are paid on an hourly basis regardless of the number of pictures taken. The same charge is made although no pictures are actually printed in the papers.

You state that you "should have listed your income as salary." If you are in fact an employee, a different result would obtain taxwise. However, we assume you are an independent contractor. If you would care to submit evidence that you are an employee, we shall be glad to reconsider the matter.

As indicated by Section B of Sales and Use Tax Ruling 2, copy enclosed, commercial artists or any other persons or firms engaged in the creation or production of drawings, paintings, designs, photographs, or other art work are retailers of such property sold to advertising agencies for use by the agencies in the rendition of their services, advertisers, or others.

Effective January 1, 1950, tax applies to the gross receipts from the furnishings of drawings, paintings, designs, photographs, letterings, assemblies, or other art work used for reproduction as well as display purposes.

Section 6006(f) of the Law, pamphlet copy enclosed, defines "sale" as including "a transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer." (Underscore added.)

It is our position that the furnishing of exposed negatives constitutes the furnishing of photographs within the meaning of Ruling 2. We also believe your activities constitute the producing or fabrication of tangible personal property for the special order

of the newspapers. We believe the transfer of possessions of the exposed film is a sale within the meaning of Section 6006(f).

As explained by Sales and Use Tax Ruling 23, copy enclosed, tax applies to sales of photographs and photostat copies, whether or not produced to the special order of the customer, and to charges for the making of photographs and photostat copies out of materials furnished by the customer. No deduction is allowed on account of such expenses of the photographer as travel time, rental of equipment, or salaries or wages paid to assistants or models whether or not such expenses are itemized in billings to customers.

From the point of view of sales tax, the photographer is regarded as selling pictures. The tax applies to his gross receipts from the sale. For sales tax purposes, he is not being paid for services but for the pictures. It is a single transaction and the measure of tax is not altered by subdividing the billing into components and valuing each component. In other words, the tax applies to the full amount received by the photographer and the method which the parties have adopted for determining this amount is immaterial.

We have advised other photographers engaged in activities similar to yours that the tax applies as herein indicated.

Based upon the facts as herein presented, we believe the tax to be properly computed and shall so advise the Board. However, if we have misunderstood the facts or you feel the law has been misapplied, you may request an oral hearing before a legal hearing officer in Santa Rosa or, if more convenient, in San Francisco, or you may request a formal Board hearing. Please advise us of your wishes in this regard.

Very truly yours,

Jack D. Paulson
Assistant Counsel

JDP:jle

Enclosures: Sales and Use Tax Rulings 2 and 23 California Sales and Use Tax Law

cc: Santa Rosa -Compliance