

**M e m o r a n d u m****295.1630**

To: --- -- Auditing

Date: July 31, 1973

From: Tax Counsel - Headquarters

Subject: --- ---.

SR --- -----

This is in response to your memorandum of May 24, 1973.

Taxpayer is a franchisor of its --- --- photographic and sales techniques, methods, and procedures. Taxpayer has entered into franchise agreements with independent photographers located outside the State of California. Under taxpayer's franchise agreements, taxpayer is required to supply its franchisees with ". . . all film, paper forms, order books, mounts, prints, processing service, printing service, and delivery service necessary to carry out the business of [the franchisee] as a photographic studio." The ". . . price for these services, supplies and counsel. . ." is a percentage of the franchisee's gross sales.

Taxpayer ships unexposed film to its franchisees out of state. After exposing the film the franchisee returns the film to taxpayer for development. The film is sent by taxpayer to --- (*a photo lab*) where it is developed by the reversal process method. --- (*The photo lab*) returns the developed transparencies to taxpayer who mounts the transparencies. Taxpayer ships the slides to the franchisee who shows them to its customer. The franchisee may (a) make no sale, in which case it retains the slide, (b) sell the slide only, in which case we assume it would deliver the slide to the customer, or (c) obtain an order from the customer for prints. Upon obtaining an order for prints, the franchisee ships the slide to taxpayer who turns the slide over to --- (*the photo lab*). --- (*The photo lab*) makes the prints and returns the slide and the prints to taxpayer. Taxpayer then ships the slide and the prints directly to the customer of the out-of-state franchisee. Taxpayer indicates, in its letter of February 6, 1973, that 81 percent of the slides are sold to customers of the franchisee (although the Report of Discussion of February 1, 1973, suggests that about half the slides are sold).

We are in agreement with taxpayer's basic contention that film and processing services furnished by taxpayer to its independent franchisees are sold within the meaning of that concept as it is used in the Sales and Use Tax Law. That the price of the items sold is determined by a percentage of the franchisee's gross receipts is immaterial.

We are of the opinion that sales tax does not apply on taxpayer's sale of the unexposed film (the sale is in interstate commerce or for resale), that sales tax does not apply on --- (*the photo lab's*) processing charge to taxpayer (not a processing of consumer furnished tangible personal property), that sales tax does not apply to taxpayer's charge to its franchisees for the processing (interstate commerce or sale for resale), that tax does not apply on (*the photo lab's*) charge to taxpayer for making the prints (sale for resale), and that tax does not apply on taxpayer's charge to the franchisees for making the prints (sale for resale).

GJJ/ab