



STATE BOARD OF EQUALIZATION

(916) 445-5550

January 10, 1991

RE: --- --- ---

Dear ---

This is in response to your letter dated November 26, 1990 regarding application of sales and use tax to the business of a photographer.

Your question involves an example set forth in our Tax Tip pamphlet for photographers. Example number 4 on page 11 involves the lease of black and white negatives and color transparencies from a photographer to a magazine publisher. The example states that since the color transparency films and processing were purchased for resale, tax applies to the lease receipts.

Your interpretation of the statement from this example is that it follows that if the color transparency film and processing were purchased tax paid, there would be no sales tax applicable to their lease. If the actual items leased by the photographer are not provided to the lab for processing but rather originated with the lab, then the items would be leased by the photographer in substantially the same form as acquired. Therefore, if the photographer paid sales tax reimbursement or use tax to the processing lab, or if the photographer timely elected to pay use tax measured by purchase price, then the photographer's lease of such items would not constitute a "sale" and your interpretation would be correct, that is, no sales or use tax would apply to the lease. (Rev. & Tax. Code S§ 6006(g), 6006.1, 6010(e), 6010.1, Reg. 1660(c).)

An example of this would be if the photographer provides exposed film to the lab, and the lab processes the film and provides negative's and color prints to the photographer. If the photographer paid tax on the prints, the photographer's lease of those prints would not be a sale and no tax would apply. The reason for this is that the tangible personal property leased by the photographer, the prints, is leased in the same form as acquired by the photographer. On the other hand, the photographer's lease of the negatives would be a sale and tax would apply to the rental payments regardless of whether tax was paid to the lab. The reason for this is that the photographer does not lease the negatives in substantially the same form as acquired. That is, the exposure of the film by the photographer is a substantial change to the film. Since a negative is the actual film exposed by the photographer, it is not leased in substantially the same form as acquired by the photographer.

Your question specifically relates to color transparencies. If those transparencies are the result of processing the actual film you expose, then you are not leasing the raw film in

substantially the same form as acquired (i.e., raw film). Your lease is a sale and is subject to use tax measured by rentals payable. If you pay sales tax reimbursement or use tax to the lab and you make no use of the transparencies except to lease them, you may take a tax-paid purchases resold deduction for the tax paid to the lab. (See Reg. 1701, a copy of which is enclosed.)

If you further questions, feel free to write again.

Sincerely,

David H. Levine
Senior Tax Counsel

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cc: San Francisco District Administrator
Enclosure: Regulation 1701