



STATE BOARD OF EQUALIZATION

(916) 445-6493

February 3, 1981

Gentlemen:

Re: X-----

This is in response to your letter of November 18, 1980 addressed to our Hollywood office. We understand that you are commencing a new business venture which offers a service to owners of homes and businesses. It consists of the photographic documentation of personal property and structures which may be used at a later date for insurance claims or for tax purposes.

We understand that you supply the film and perform the photography, you store the negative film (long-term, no extra charge), and grant the customer the right to order prints (photos) of the images on the negative film as required, for which there is a reasonable charge plus sales tax. A flat fee is charged for the original photo transaction.

Your prime concern is how tax applies to this original photo documentation process. You also ask how tax applies in six different factual situations labeled Cases A through F, which will be discussed below.

As you know, the sales tax is imposed upon all retailers for the privilege of selling tangible personal property at retail, measured by gross receipts from the sale (Revenue and Taxation Code Section 6051). A "sale" includes any transfer of title or possession of tangible personal property for a consideration (Section 6006). The tax does not apply to transactions which are solely in the nature of services, i.e., there is no sale of tangible personal property.

Where a transaction includes the transfer of photographs or slides, the tax applies to the entire charge, without deduction for any of the services required to produce the photograph or slide. (See Regulation 1528, copy enclosed.) For that reason, the transfer of title or possession to any negatives, slides, or prints resulting from the original photography is a sale. The entire charge to your customer is taxable. The gross receipts are reportable as of the time of transfer of the negatives, slides or prints.

Conversely, a transaction in which a photographic studio for a flat fee uses its own film, performs the photographic documentation of the customer's premises, stores the negative film, retains title and exclusive possession of the negative film and any positives developed from it, is a service transaction, not a sale, and sales tax does not apply.

You request a ruling on each of the following:

“Case A. Our contract with the customer states that the film remains our property. No title or possession passes to the customer.”

As noted above, if neither negatives, positives, nor any other tangible personal property are ever transferred, this would be a service transaction, not a sale; nontaxable.

“Case B. No title or possession of the film passes to the customer, but our contract fails to clearly state this.”

Under Section 6091 there is a presumption that all gross receipts are subject to the tax. A clear statement as in the answer to Case A, is therefore recommended.

“Case C. No title to the negatives passes to the customer. Our contract states this. The slides are given to the customer if he wishes, as a free service.”

We understand that the slides are part of the dual package you receive from the processing lab, the other being the original negative films, for which your cost is \$5.00 and includes the cost of the film and processing. The transfer of possession of the slides or any tangible product of the original photography would result in your entire charge, including the documentation fee (\$190 - \$300), being taxable.

“Case D. No title to the negatives passes to the customer. Our contract states this. The customer is allowed to buy the slides for a small charge (\$2.50).”

The sale of the slides would be taxable. The tax would apply to the entire charge to the customer, including the original documentation fee.

“Case E. The customer is permitted to buy either title to the negatives, the slides, or both, for \$2.50 each. If he buys the slides, they are given to him. If he buys the negatives, however, we retain possession of them.”

A transfer of either title or possession is a sale (Section 6006). The entire charge to the customer is taxable including the fee and the \$2.50.

Case F. The customer is obliged to buy both negatives and slides under the contract, with our company retaining possession of the negatives. Charge: \$2.50 each.”

Answer to Case E applies here.

If we may be of further assistance, please write the undersigned.

Very truly yours,

Margaret H. Howard
Tax Counsel