



STATE BOARD OF EQUALIZATION

5-26-50

This is in answer to your letter of May 17 in which you request us to review the opinion expressed in our letter to you of May 11 regarding the application of the tax to your sales of photographs, in which a separate charge is made for reproduction rights.

It is our opinion that this type of transaction is somewhat analogous to the transaction involved in the case of *Thys et al v. State of Washington*, 199 P 2d 68. There, a hop-picking machine was sold for a fixed price. In addition to the sales price, the purchaser, however, was required to pay a minimum of \$500.00 per year for the right to use the machine for its intended purpose, designated a "royalty." In that case the Court held that "... while title to the machine itself passed from respondents to the purchaser upon payment of the purchase price named as such in the contract, the purchaser thereby obtained no more than bare title to the machine, without the right to use it, ..." and that "While the annual payments reserved to respondents by the contract are therein referred to as 'royalties,' such payments, together with the so-called purchase price of the machine, are, as a matter of fact, when taken together, the amount paid by the purchaser for the complete and unqualified title to the hop-picking machine purchased."

The conclusion of the Court in the above case is that the so called "royalties" are "for the purposes of the statutes of this state Washington providing for the payment of a sales tax, part of the selling price of the machine and taxable as such." Applying the principle of this case to your sales of photographs for reproduction purposes, it would appear equally unjustifiable to regard a charge for the bare legal title to the photograph as the full sales price subject to the sales tax, to the exclusion of a charge for the right to use the photograph for its intended purpose, i.e., reproduction.

It would appear to be immaterial whether the right of reproduction granted upon the sale of the photograph is unlimited or restricted. In either event, it appears that the purchaser buys the property for the purpose of reproduction. For purposes of the sales tax, the total amount which he is required to pay to purchase the photograph for such use would appear to be part of your gross receipts subject to the sales tax, without regard to the manner in which you may choose to segregate this amount.

As indicated by Section B of Sales and Use Tax Ruling 2, copy enclosed; commercial artists are regarded as retailers of photographs sold for reproduction purposes. This applies to photographs sold for editorial reproduction purposes, as well as to those sold for reproduction for advertising purposes.

Vty-RGH