



STATE BOARD OF EQUALIZATION

November 3, 1967

Gentlemen:

This is in reply to your letter of October 18, 1967.

It is our understanding that you are in the portrait photography business. The negatives frequently require retouching. You send the negatives to persons in the business of retouching who cover up various defects in the negatives by means of lead penciling.

The question has been raised as to whether the charges made to you by those retouchers for retouching the negatives are subject to sales tax. The answer to this question depends on whether or not you sell the retouched negatives to your customers.

We understand, from your letter, that where only one negative is required by a particular customer, you do not make a separate charge for the negative. On the other hand, where more than one negative is required, you will charge him for all negatives.

Under Section 6006(b) of the Revenue and Taxation Code, the producing, fabricating or processing of tangible personal property for a consideration for consumers who furnish, either directly or indirectly, the materials used constitutes a sale. Under Section 6007, a sale for any purpose other than resale in the regular course of business is a retail sale. Since you do not charge your customers for single negatives, you are the consumer thereof, and the retouching constitutes processing or fabrication under Section 6006(b), the charges for which are subject to sales tax.

Where you make a separate charge to your customer for negatives, you are the seller thereof and not the consumer. Since you are the seller, the retouching of such negatives is for the purpose of resale, and the charges to you for retouching such negatives are not subject to sales tax.

Very truly yours,

George A. Trigueros
Tax Counsel

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