

**M e m o r a n d u m****420.0690**

To: Mr. A. L. Hall

Date: July 18, 1983

From: Charles J. Graziano

Subject: Application of Tax to Lump-Sum Billing by X-ray Laboratories

Your memorandum of June 16, 1983 to Mr. Donald Hennessy has been referred to me for reply. You request our opinion as to the correct application of tax to the sale of x-rays by x-ray labs and by veterinarians.

As a preliminary matter, we note that prior to October 1, 1982, Section 6020 of the revenue and Taxation Code provided that producers of x-ray films used for the purpose of diagnosis are consumers of materials and supplies used in their production. Effective October 1, 1982, Section 6020 was amended (Senate Bill 1252, Chap. 301, Stats. 1982) to provide that "producers of x-ray films and photographs for the purpose of diagnosing medical or dental conditions of human beings, excluding use of those products for purely cosmetic purposes, are the consumers of materials and supplies used in the production thereof." Essentially, SB 1252 extended the former exemption from the sales tax for x-rays to the sale of photographs. It also clarified the purpose for which such photographs and x-ray films can be used, i.e., for diagnosing medical or dental conditions of human beings and not for purely cosmetic purposes.

Therefore, as currently provided under Section 6020, tax applies to the sale of materials and supplies used in the production of x-rays and photographs which are used for medical or dental diagnosis of human beings and are not used for purely cosmetic purposes. Tax does not apply to the related sale by the producers of such x-rays or photographs to their customers, since the producer is deemed to be a consumer and not a retailer of such items. Producers of such exempt x-rays and photographs who are considered to be consumers and not retailers are not required to hold a seller's permit. The sale of x-rays or photographs which are used for purely cosmetic purposes is not exempt from tax. Accordingly, the producers of x-ray films and photographs used purely for cosmetic purposes are considered retailers of such items, and are required to hold a seller's permit.

You inquire as to the correct application of tax to the following situations:

1. An x-ray lab makes a lump-sum charge for the furnishing of either:
  - a. x-rays which are not subject to tax and other items of tangible personal property which are taxable, or
  - b. services which are not part of sale of tangible personal property and x-rays which are subject to tax (e.g., x-rays used for purely cosmetic purpose), or
  - c. taxable and nontaxable x-rays which are performed on the same patient.

As of October 1, 1982, the x-ray lab is considered to be a retailer of tangible personal property under all three situations described above. When a transaction involves a sale of tangible personal property, tax applies to the gross receipts from the furnishing of such property, unless the sale is otherwise exempt from tax. When a retailer makes a lump-sum charge for taxable and nontaxable items, there must be an allocation or proration of the charges between the respective items; tax applying only to the sale of items not exempted. Therefore, under the situations described above, tax does not apply either to the charges attributable to the exempt x-ray films (situation 1a and 1c) or to the charges attributable to the nontaxable services (situation 1b).

2. A veterinarian makes a lump-sum charge for professional services, which are not related to the sale of tangible personal property, and for x-rays.

Since Section 6020 of the Revenue and Taxation Code, as currently amended, specifically applies only to x-rays of human beings, the sale of x-ray films for the diagnosis of medical or dental conditions of animals is no longer exempt from the sales or use tax. Therefore, a proration of the lump-sum charge must be made by the veterinarian between the charges for the sale of the x-rays and for the nontaxable services. Under such circumstances, the veterinarian is considered to be a retailer of tangible personal property and is required to hold a seller's permit.

CJG:ba