

Memorandum

420.0697

To : Roberta Ross
Tax Auditor - San Jose

Date: January 12, 1994

From : Gerald Morrow
Tax Counsel

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Subject: Furnishing X-rays with Reports/Regulations 1501 and 1528

This is in response to your memorandum to the Legal Department dated November 2, 1993, regarding the application of tax to certain photographs, x-rays and/or imaging inspection services where tangible personal property and documentation are transferred as part of the contract.

You describe four different situations which you refer to as scenarios A, B, C and D. Each of your scenarios is quoted below, followed by my response.

"Scenario A In this case the contract calls for the taxpayer to provide equipment, materials and labor to perform x-ray service on structural bridge components. The contract calls for the development of film on-site and the transfer of the film and the following documentation upon completion of the work: a procedures manual showing how the x-rays were taken; a survey of the radiation levels in the area; logs showing details of how each x-ray was shot; logs showing radiation exposure to personnel.

"The taxpayer's invoices show itemization for travel and boarding expenses, equipment costs/rental (both travel and on-site), on site personnel time at fixed rates per hour, and film. The contract calls for no professional interpretation of the radiographs or equipment and the labor to shoot and develop the radiographs. There is no specific language passing title of the radiographs, it is implied in the fact that the required documentation is useless without the accompanying film."

The transfer of film, photographs, x-rays and illustrations in this state is a retail sale of tangible personal property subject to sales tax. (Rev. & Tax. Code §§ 6006, 6051, Regulation 1528.) The taxable gross receipts include the total amount of the sale with no deduction for the cost of the property sold, materials used, labor or service cost, or any other expense. (Rev. & Tax. Code § 6012(a).)

On the other hand, providing of a service which is unrelated to the sale of tangible personal property is not subject to sales or use tax. Whether a particular transaction involves a sale of tangible personal property or instead involves the providing of a service with an incidental transfer of tangible personal property depends upon the true object of the contract. That is, the question is whether the true object of the customer is to obtain the service per se or the property produced by the service. If the true object is the service per se, the transaction is not subject to tax even though some tangible personal property is incidentally transferred. (Reg. 1501.)

In this instance the taxpayer provides equipment, materials and labor to perform x-ray's on structural bridge components. The contract calls for the transfer of film and documentation upon completion. Professional expertise is called for in the use of the equipment and the labor to shoot and develop the radiographs. There is no professional interpretation of the radiographs or film. You indicate that the required documentation is useless without the accompanying film.

This contract called for the sale of x-rays. That professional expertise was required in the use of the equipment used to produce the film does not alter the fact that the purchaser sought that tangible personal property. We conclude that the true object of the contract above was for the provision of tangible property in the form of x-ray film. Since the documentation was part of the sale and was incidental to providing tangible personal property, the taxable gross receipts include the charges for the documentation (the procedures manual showing how the x-rays were taken; the survey of the radiation levels in the area; logs showing details of how each x-ray was shot; logs showing radiation exposure to personnel), with no deduction for materials, equipment costs, labor or any other expense such as travel and boarding costs that were incurred for the purpose of producing the x-ray film.

" **SCENARIO B** The contract calls for x-rays of a concrete floor. The purpose of the contract was to determine location of metal within the concrete, prior to excavation. After the pictures were taken the exposed film was physically laid upon the floor so workers would know where not to cut. The invoice includes equipment rental, parts pertaining to darkroom supplies, travel expenses, and inspection time. No written report was furnished. The buyer received the film."

Annotation 420.0720, which pertains to the sale of x-ray film that was not purchased for the purpose of medical diagnosis, provides:

"[W]hen X-ray laboratories furnish radiographs for such purposes as inspection of metals, the laboratory is the retailer and liable for payment of sales tax measured by the retail selling price of the radiographs. If a laboratory enters into a contract for the furnishing of an X-ray inspection service, there being no transfer of title to radiographs involved, charges for the performance of such an inspection service would not be taxable. (10/22/51)"

The purpose of the contract in this case was to provide x-rays that determine the location of metal within a concrete floor, prior to excavation. No written report was furnished. Like the laboratory mentioned in the annotation above the x-ray provider is furnishing tangible personal property in the form of x-rays, for purpose of inspection of metals, and thus the x-ray provider is the retailer who is liable for payment of the tax measured by the total gross receipts from the sale of the x-rays. Again there is no deduction for materials, equipment, labor or any other expenses incurred for purpose of producing the x-rays. (Rev. & Tax. Code 6012(a).) Therefore, assuming the charges on the invoice for equipment rental, parts pertaining to darkroom supplies, travel expenses, and inspection time are all related to producing the x-rays they are taxable.

" **SCENARIO C** The contract calls for the inspection of food products possibly contaminated by foreign material. The contract calls for a report to be issued. The process involves exposing the food products to radiology and 'shooting pictures' of items that appear contaminated. If no contaminated food is found, only a report is issued. If contaminated food is found, the film becomes part of the report. Invoicing reflects technician labor, equipment rental, travel expenses, and an unspecified materials fee."

You state, "[i]f no contaminated food is found only a report is issued. If contaminated food is found the film becomes part of the report." For sales and use tax purposes when only the report is provided, the true object of the contract is for the performance of a nontaxable service. (See Regs. 1501.) Sales of additional copies of the original report will be subject to tax.

Under these specific facts, where the customer generally receives only a report and, after the performance of the same service, receives the x-rays only if contamination is found, we conclude that the true object of the contract is for the performance of a contaminated food report providing service. The film is considered to be merely incidental to providing nontaxable services, and assuming there is no additional charge for providing the film, charges for the performance of such services would not be taxable. (Annotation 420.0720 (10/22/51).) Since there is no sale of tangible personal property involved, and the contaminated food report provider is performing a nontaxable service, that service provider is the consumer of items on its invoice reflecting technician labor, equipment rental, travel expenses, unspecified materials fees and any other expenses related to producing the report. Accordingly, the sale to, or use by, the report provider of the tangible personal property consumed when performing these services is subject to sales or use tax.

" **SCENARIO D** The contract calls for the use of ultrasound and/or computer assisted topography equipment for producing imaging paper, which becomes the report itself, along with documentation upon how the imaging was produced. Invoicing separately states travel, film, equipment rental, pass through costs of equipment rented locally, technician labor, and systems operator labor."

Based on the facts that no professional interpretations or conclusions are provided and the imaging on paper becomes the report itself, which comes along with documentation of how the imaging was produced, we conclude that the true object of the contract described in Scenario D was to provide tangible personal property. As stated in Scenario A, when the documentation is only incidental to providing tangible personal property, the taxable gross receipts include charges for the documentation with no deduction for travel, film, equipment rental, pass through costs of equipment rented locally, technician labor, systems operator labor or any other expense which was incurred for the purpose of producing the tangible property.

If you have further questions, feel free to write again.

GM/md

cc: San Jose - District Administrator