

M e m o r a n d u m**420.0096**

To: Mr. Jeffrey L. McGuire
Taxpayer's Rights Advocate

Date: October 17, 1996

From: David H. Levine
Supervising Tax Counsel

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Subject: [X]

This is in response to your email message of October 9, 1996. You ask what, if anything, is subject to sales tax owed by the photographer in the following circumstance:

“The taxpayer works for [X], a dating service. Although [X] sets the taxpayers hours and provides the studio facility, they treat the taxpayer for income tax purposes as an independent contractor. When a customer applies for service with [X], there is a set charge which involves the development of a bio and photo for placement in the [X] directory which is for the use of [X] customers. When the customer signs up for the [X] service/membership they complete a standard bio and part of the fee is collected at this time. The balance is collected when the photo is taken.

Enter our taxpayer, the photographer. [X] sets an appointment time for the customer to have their photo taken. When our taxpayer takes the photo, they collect the balance of the [X] fee (made payable to our taxpayer). Our taxpayer then pays over to [X] a fixed amount of the charge and provides the photograph to [X] for use in the [X]'s directory. The amount retained by our taxpayer is her payment/consideration for shooting and providing the photos to [X]. No photos are provided to the customer as part of the charge made. However, if the customer is interested in prints of the photo taken, [X] refers them back to our taxpayer who then makes a sale of prints to the customer. Tax is charged on the full selling price of any prints provided to customers although this is rare situation.”

The only question presented is whether or not the photographer is an employee of [X]. Based upon the facts stated above, it appears that the photographer is an independent contractor, and not an employee. Thus, the photographer contracts to sell photographs to [X] and the gross receipts from those sales are subject to sales tax. Based on the facts stated above, those taxable gross receipts consist of the amounts retained by the photographer from the payment that the photographer accepts on behalf of [X] from its customer. Sales tax, of course, is due on any amounts that the customer pays to the photographer for prints sold by the photographer to that customer.

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

DHL/cmm

cc: Mr. Jerry Cornelius (MIC:40)