

**STATE BOARD OF EQUALIZATION**

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September 21, 1992

Dear X-----,

This is in reply to your August 10, 1992 letter regarding the application of sales tax to your charges for photographs. You asked the following specific questions:

"1) If I supply a newspaper or magazine publisher with photographs that are reproduced in the relevant publication for which members of the public pay sales tax, do I charge the publication or newspaper sales tax for my photographs? Or do I just obtain their sales permit number?"

Since the publisher uses your photographs in creating the publication rather than sells you photographs, your sale or lease of the photographs in this state is a retail sale subject to sales or use tax. That is true even though the sale of the newspaper or periodicals by the publisher is also subject to sales tax. Although tax does not apply to the sale of tangible personal property which is actually incorporated into the newspaper or periodical which is sold, a photograph does not become an ingredient or component part of the publication merely because the photographic image is reproduced in the publication.

"2) If I supply an advertising agency with photographs for a project for their client, am I taking the photographs for the agency or the client? The agency will pay me after the client has paid them. What I would like to know is: Does the agency pay me sales tax and the client pay the agency sales tax or is there just a one time payment by the client to the agency? Is sales tax paid twice for the same goods? Does the agency give me their Seller's Permit number in lieu of sales tax?"

You should consider your sale of the photographs to the advertising agency as a retail sale unless the advertising agency insists that it is purchasing the photographs for resale to its customers. In that case, you should require a resale certificate from the advertising agency containing a statement that the specific property is being purchased for resale in the regular course of business. (Sales and Use Tax Regulation 1668, Resale Certificates, subd. (d).) Unless the advertising agency passes title to the photographs to the client prior to using them, both our retail sale of the photographs to the advertising agency and the advertising agency's sale of photographs would be subject to sales tax. Depending on the contractual arrangement between the advertising

agency and its client, the advertising agency may purchase the photographs as an agent on behalf of the client. This is explained in subdivision (a) (2) of Regulation 1540, a copy of which is enclosed. In such case, you should similarly consider your sale of the photographs to the client as a taxable retail sale.

"3) Do I pay sales tax for film which I use to take speculative "Stock Shots" for my photo library? A large proportion of the income to my business will be from stock shots. These are basically photos taken with the intention of selling them to either a magazine or advertising agency for example. What happens if the photos are not resold and they just sit in my folders? These are basically taken for resale purposes. Is there any time limit as to how long a photo may be kept before it can be written off as useless?"

You may purchase for resale slide transparency film that you process into slide photographs which you hold solely for resale in the regular course of business, provided you make no use of them prior to their resale. On the other hand, you may not purchase for resale film which you will have processed into negatives which you will use to make positives for sale. The sale of the negative film to you is a retail sale, because you use the film as a manufacturing aid in producing the resulting prints. You may purchase for resale prints which you will hold solely for resale prior to any use.

Assuming you make no use of the prints or slide transparencies other than demonstration and display while holding them for resale, the sale to you is a sale for resale regardless that you ultimately destroy them. There is no specific period of time which you may hold the property for resale before destroying it. Generally, except for certain donations of property to qualified organizations, pursuant to Sales and Use Tax Regulation 1669, subdivision (b), if you make any use of the property other than demonstration and display for the purpose of resale, you are responsible for reporting and paying use tax measured by the sale price of the property to you. We would not consider your destruction of the property as a taxable use.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald. L. Dick
Senior Tax Counsel

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