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June 18, 1997

Ms. L--- A---
C--- I--- G--- P---
XXXX --- Ct., Suite #XXX
--- ---, CA XXXXX

Re: *Taxability of Photographic Sitting Fees*
SR -- XX-XXXXXX

Dear Ms. A---:

This is in response to your letters of January 23, 1997 and February 28, 1997 in which you question whether charges for photography "sitting fees" are subject to sales tax. These letters were forwarded to the Legal Division for reply on April 29, 1997.

In your letter of January 23, 1997 you state that your company, C--- I---, is primarily a glamour photography business. You explain :

"We hire independent contractor photographers and make-up artists and send them to beauty salons. The beauty salons set up appointments with their patrons and do the hair styling. Our make-up artists also give the patrons makeovers before our photographers take their pictures. The beauty salons contract with us provide that we get \$9.95 of the \$29.95 that the salon charge their patrons. That \$9.95 is our sitting fee."

You further explain that:

"Like almost all photography studios most of our income is from selling photographs. However, the salon patrons are under no obligation to buy anything. Of course we collect and pay sales tax when we do sell photographs."

In response to your January 23, 1997 letter, staff sent you a copy of Pamphlet 68 entitled, "Tax Tips for Photographers, Photo Finishers & Film Processing Laboratories," which explains, at page one, that sales tax applies to "sitting fees when finished pictures or proofs are received by the customer." This pamphlet, also at page one, further explains that sales tax does not apply to "sitting fees, when no tangible personal property, such as finished pictures or proofs, are received by the customer."

In your letter of February 28, 1997 you state that it is your belief that charges for “sitting fees” do not constitute payment for taxable goods or that pamphlet 68 addresses your situation. In this letter you explain that:

“The sitting fee is actually a payment for makeup and hairstyling, not for photographs. While we do give away a free sample photograph in order to entice patrons to purchase photographs, the cost of the photograph is negligible, about \$1.25. In contrast the cost of the makeup and hairstyling is such that we make only a small profit on our \$9.95 to \$19.95 portion of the sitting fees. Many of our patrons use our service without any intention of purchasing photographs since \$9.95 is very inexpensive for a makeover.”

In your two letters you have provided conflicting information. For example, in the January 23, 1997 letter you specifically state that “the beauty salons’ contracts with us provide that we get \$9.95 of the \$29.95 that the salon charges each of their patrons.” You further state that you hire only the photographers and the makeup artists. Yet in your letter of February 28, 1997, you state that “the makeup fee is actually a charge for makeup and hairstyling, not for photographs” and that “the cost of makeup and hairstyling is such that we make only a small profit on our \$9.95 to \$19.95 portion of the sitting fees.”

Based on the information contained in both letters, we assume the following facts:

- C--- hires photographers and make up artists.
- C--- contracts with beauty salons which charge \$29.95 for a make over which includes, hairstyling, makeup, and one photograph.
- The purpose of this promotion is to entice patrons to purchase photographs.
- C--- receives \$9.95 of the \$29.95 charged by the beauty salon.
- The hairstyling is performed by employees of the beauty salon.
- The make up is applied by the makeup artist hired by C---.
- The photograph is taken by the photographer hired by C---.

California imposes a sales tax on a retailer’s gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) A sale includes any transfer of title or possession, in any manner or

by any means whatsoever, of tangible personal property for a consideration (Rev. & Tax. Code § 6006(a).) When sales tax does not apply, use tax applies to the use of property purchased from a retailer for use in California, unless the use is specifically exempt from tax. (Rev. & Tax. Code §§ 6201, 6401.) Sales of services are not taxable, since they are not sales of tangible personal property. The basic distinction in determining whether a particular transaction involves a sale of tangible personal property or a service is one of the true object of the contract.

It appears to be your contention that you are a makeover service and that the “free sample photograph” given to the client is merely incidental to the services performed. Thus, you conclude that sales tax should not apply under circumstances where the client only receives the “free sample photograph” and does not purchase additional photographs or enlargements of the “free sample photograph.” This contention is inconsistent with both your business logo which describes your business as “C--- I--- G--- P---,” and your statement, in your letter of January 23, 1997, that: “Like most photography studios, most of our income is from selling photographs.” Thus, it is our conclusion that the makeover is incidental to the “sitting fees and the sale of the photographs.

Subdivision (a) of Regulation 1528 (copy enclosed), entitled Photographers, Photostat Producers, Photo Finishers and X-Ray Laboratories, states the general rule that sales tax applies to sales of photographs. As previously explained, Publication 68 states that sales tax applies to sitting fees when the customer receives finished proofs or pictures. This conclusion is supported by BTLG Annotation 440.0310 (4/24/57). Regulation 1528(a) further provides that that there are no allowable deductions on account of expenses associated with producing the photographs even if the charges are itemized in the billings to customers. Thus, in accordance with Regulation 1528(a) sales tax applies to all of C---’s charges when the customer receives a finished proof or picture.

If you have any further questions, please feel free to contact this office again.

Sincerely,

Patricia Hart Jorgensen
Senior Tax Counsel

PHJ:cl

Enclosure (Regulation 1528)

cc: San Diego District Administrator
Ms. Monique Everson, Tax Representative - Return Analysis Section (MIC:35)