

M e m o r a n d u m**420.0500**

To: San Diego – District Principal Auditor (WLW)

Date: October 31, 1969

From: Tax Counsel (LAA) – Headquarters

Subject: Chemicals Used in Developing Photographic Negatives

This is in response to your memorandum of October 17, 1969, concerning taxability of chemicals used in developing photographic negatives.

I believe that both Mr. G. A. Trigueros' letter of 4/29/68 and my letter of 5/21/69 are correct and that the key is found in the first paragraph of part (b) of ruling 23. That paragraph says charges for developing negatives are not taxable only if separately stated. In my opinion, the effect of this provision is to make the developing of the negatives a taxable processing where not separately stated and a nontaxable step in processing when separately stated.

Where the charge for developing is separately stated, we do not view the transfer of the negatives as a "sale"; consequently there can be no purchase for resale. - The photofinisher is, therefore, the consumer of chemicals used in developing negatives; and tax applies to his purchases thereof where a separate charge is made, regardless of whether the chemical is incorporated into the finished product or consumed in the developing process.

On the other hand, if no separate charge is made, the negatives are "resold" and the tax is applied to the purchase of chemicals, under the principles of ruling 14.

As you point out, the current common practice is not to separately state such charges and to charge tax reimbursement on the entire charge to the customer. In most cases, therefore no problem will exist. A problem will exist where developing charges are separately stated and we attempt to tax purchases of chemicals that are incorporated into the negatives.

Since the list, Exhibit A, sent by Eastman Kodak Company to Sam Stein in New York appears to have been drafted with adherence to the proper tax principles, it should be accepted as accurate until we have clear evidence to the contrary.

I have circulated this memorandum to several other members of the legal staff and there is agreement on it.

LAA:ph

