

**STATE BOARD OF EQUALIZATION**

916/445-2641

September 27, 1978

**REDACTED TEXT**

This is in response to your letter of July 21, 1978. You have raised certain questions with respect to the application of the sales tax to charges made by certified shorthand reporters for furnishing copies of depositions. On June 30 we discussed by telephone that portion of a recent opinion of ours wherein we concluded as follows:

“Tax does not apply to the first copy (carbon copy or photocopy) furnished to other parties to the litigation. Tax applies to additional copies beyond the first copy furnished to such persons.”

You have requested that we reconsider this conclusion in light of Government Code Section 8211.5, which provides in part as follows:

“For his services transcribing a deposition the reporter shall receive from the party purchasing the original seventy-five cents (\$0.75) per 100 words, and for each copy made at the same time ten cents (\$.10) per 100 words; from all other parties purchasing the same the reporter shall receive for each copy made at the same time as the original twenty-five cents (\$.25) per 100 words for the first copy and ten cents (\$.10) per 100 words for additional copies.”

It is your view that since the Government Code regulates what charges the notary public or reporter may make for his services of transcribing a deposition and specifies charges for copies beyond the first, it is contemplated that the parties to litigation may sometimes require more than a single copy of the deposition.

The basis for our conclusion that tax does not apply to copies of depositions furnished to parties to the litigation other than the party contracting for performance of the service is the rule stated in the Code of Civil Procedure, Section 2019, that upon request and upon the payment of reasonable charges therefor “a copy” of the deposition must be furnished to any party to the litigation. The furnishing of a single copy is not regarded as a transfer of title for a consideration since the copy is furnished pursuant to statutory mandate. The basis for the exemption is not the fact that the charge is regulated by statute.

As you are aware, Section 8211.5 only establishes a minimum charge for counties having a population of 5,000,000 or over. It is our understanding that where an additional copy is furnished to a party to the litigation who is not the party contracting for the performance of the

service, the copy provided is generally a photocopy. It is also our understanding that generally reporting services, in furnishing additional photocopies, do not charge at the statutory rate but only at a lesser rate reflective of the lesser costs involved in making photocopies. Sales tax applies to charges made for providing photocopies of documents. Photocopying is considered a printing process under the Sales and Use Tax Law.

You raise a further question concerning our conclusion that tax applies to all copies sold to persons not parties to the litigation. It is our understanding that in some rare instances copies of depositions are furnished to attorneys who may be handling similar litigation. Tax would apply to charges made in this instance. You suggest that copies of depositions would be nontaxable when furnished to expert witnesses because the witness's right of review is provided in Code of Civil Procedure, Section 2019. Section 2019 does provide that, upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to the deponent. Tax would not apply to charges made for furnishing a copy of the deposition to the deponent.

Very truly yours,

Gary J. Jugum  
Tax Counsel

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bc: San Francisco – District Administrator