

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

In the Matter of the Petition for	)	
Redetermination of State and Local	)	DECISION AND RECOMMENDATION
Sales Tax;	)	
	)	No REDACTED TEXT
REDACTED TEXT	)	
	)	
<u>Petitioner.</u>	)	

The above-entitled matter came on regularly for hearing on Friday, May 27, 1977 in Pasadena, California. Robert H. Anderson, Hearing Officer.

Appearing for Petitioner: Ms. REDACTED TEXT, Owner

Appearing for the Board: Ms. Rebecca L. Jones, Auditor  
Van Nuys District

Protest

Pursuant to an audit covering the period from 10-1-74 through 7-31-76, and a determination issued on December 9, 1976, petitioner protests the assessment of sales tax on gross receipts from certain charges made in connection with the sale of medical records copies. The measure of the tax is \$REDACTED TEXT as follows:

Location Stops, Work Orders, and Copy Charges netted from total sales	\$REDACTED TEXT
Location Stops, Work Orders, and Copy Charges claimed as exempt labor	<u>REDACTED TEXT</u> \$REDACTED TEXT

Contentions

The copy charge portion of the audited liability represents charges made by doctors for furnishing patient's medical records to be copied. This amount is paid and recovered by passing it on to the customer without any mark up.

Petitioner believes the copy charges represent fees advanced on behalf of customers who reimbursed petitioner for them when billed for the copies of the medical records.

Summary

Petitioner was the sole proprietor of a very small photo copy business that commenced on or about October 1, 1974. The business consisted of producing copies of medical records for lawyers and insurance companies generally. There were no audits of the business other than the one under consideration, and it was initiated because petitioner sold the business.

Invoices to customers contain a breakdown of the various charges including sales tax. Following is an example of one invoice:

188 pages @ .35	\$61.80
Sales Tax	<u>3.71</u>
4 Location Stops @ 5.50	22.00
Work Order Charge	<u>17.60</u>
	105.11
Copy Charge	<u>5.00</u>
Total	\$110.11

Petitioner charged tax on the billings for the pages only, but does not protest the assessment for tax on receipts from charges for “Location Stops” and “Work Order Charges”.

Location Stops are just what the words imply; they are the places where petitioner had to go to obtain possession of records to be copied, and include doctor offices, hospitals, clinics, etc. Petitioner makes a flat charge for each stop regardless of how far or near the location is to her base of operations.

Work Order Charges are for time to phone and set up appointments to obtain records, time to put the records in order for copying, delivery to the customer, time to get microfilm of the records copied.

Copy charges represent amounts charged by doctors for use of the records. The doctors do not render any service in connection with furnishing the records, they merely make a charge to petitioner for the use of them. The use being the copying of them.

The customer who wants the copies of the records specifies what is needed, and petitioner obtains the entire file of records which often includes some not needed. Thus, petitioner picks out what is needed and copies it.

### Conclusions

Regulation 1528 (18 Cal. Admin. Code 1528) subsection (a)(2) provides, in part, as follows:

See amendments  
to Reg. 1528 esp.  
1528(b)(2)(A).  
SPJ 12/14/01

Persons engaged in producing photostat copies of medical records to the order of customers are the retailers of photostats produced, whether or not the copies are produced at the business of the taxpayer or at a medical office, hospital or other field location. The tax applies to the entire charge for the production of the Photostat copies without deduction for expenses incurred in obtaining access to the records, travel time, time spend in selecting the particular records desired, the field service of photostating or microfilming the records or any other costs or expenses of filling the customer’s order. Underlines added.

Section 6011 of the California Sales and Use Tax Law contains the definition of “sales price” which provides, in part, generally that it means the total amount for which tangible personal property is sold without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses, or any other expenses.

Section 6012 of the law contains the definition of “gross receipts” which provides, in part, generally that it means the total amount of the sale price of the retail sales of retailers without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.

The charge made by doctors for use of the records is a direct expense in connection with making copies of them. The fact that petitioner does not elect to mark up that expense and instead passes it on to the customer makes no difference. It is nonetheless one of several expenses and is what the Legislature meant to be included in “sale price” and “gross receipts”.

It is true, the customer might have dealt directly with the owner of the records in obtaining them for copying and paid the owner directly. Were this the case it would not be an expense connected with the retail sale of the records and therefore not an expense of petitioner; but that is not the way business was conducted. It is well established that tax consequences result from what did, in fact, happen, not what might have happened if a taxpayer chose a different method of carrying out a given transaction.

In summary, the charge made by doctors for use of the records is an expense incurred in obtaining access to the records, and the Regulation expressly calls for the inclusion of expenses incurred in obtaining access to the records in the gross receipts from sales of them.

#### Recommendation

Redetermine without adjustment.

\_\_\_\_\_  
Robert H. Anderson, Tax Counsel

June 6, 1977  
Date

Reviewed for Audit:

\_\_\_\_\_  
Principal Tax Auditor

\_\_\_\_\_  
Date