

# Photographers, Photo Finishers, and Film Processing Laboratories

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## PREFACE

This publication is designed to help you understand how sales and use tax applies in your business operations. If you cannot find the information you are looking for in this publication, please visit our website or call our Customer at 1-800-400-7115. Customer service representatives are available to answer your questions weekdays between 8:00 a.m. and 5:00 p.m. (Pacific time), except state holidays.

This publication complements [publication 73](#), *Your California Seller's Permit*, which includes general information about obtaining a permit; using a resale certificate; collecting and reporting sales and use taxes; buying, selling, or discontinuing a business; and keeping records. Please also refer to our website or the [For More Information](#) section of this publication for Board of Equalization (BOE) regulations and publications referenced in this publication.

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*Note:* This publication summarizes the law and applicable regulations in effect when the publication was written, as noted on the cover. However, changes in the law or in regulations may have occurred since that time. If there is a conflict between the text in this publication and the law, decisions will be based on the law and not on this publication.

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# TAXABLE SALES OF PHOTOGRAPHS AND RELATED PRODUCTS

*This section is intended to help you understand how sales tax applies to the sale of photographs and related products. Later sections in this publication explain common nontaxable sales, special situations that may apply to your photography-related business, and how tax applies to your purchases. For more information, you may also obtain a copy of [Regulation 1528](#), Photographers, Photocopiers, Photo Finishers, and X-Ray Laboratories.*

## “Photograph,” defined

We use the term “photograph” in this publication to mean both of the following:

- A still image that is printed or captured on some form of physical medium such as film or paper. This includes slides, photographic and ink jet prints, and negatives.
- A digital image captured and stored on a transportable data storage medium such as a hard drive, CD, DVD, removable disk, or flash memory.

## Tax generally applies to sales of photographs and related products

In general, the sale of goods and merchandise in California is taxable unless the sale qualifies for a specific exemption or exclusion. Labor and service charges are also taxable if they result in the creation of products. Sales of photographs and related items are treated the same as other products and are generally taxable unless a specific exemption or exclusion applies. This is true whether you have a role in creating the photographs yourself or sell photographs other people create. Note that tax may apply each time you sell a copy of the photograph, even if you are making an additional sale of the same photograph to the same client.

The general rules explaining how tax applies to sales of photographs are explained in this section. The amount on which you calculate tax may depend on the type of sale as outlined below.

### ***Portrait, wedding, and other noncommercial photography***

When you sell art prints or shoot photographs for noncommercial use, the taxable amount of your charge will generally include all of the following:

- Your charges for the physical product you transfer to your customer.
- Any labor and services involved in producing or fabricating the photograph.
- Any reproduction rights associated with the photograph.

These kinds of sales are described in this section. For the application of tax to reproduction rights see [Reproduction Rights, Leases, and Transactions with Stock Photography Agencies](#).

### ***Commercial photography***

Photographs are considered to be purchased by your customer for “commercial use” when the purchaser intends to use the images for promotion, publicity, marketing, publishing, advertising, corporate communications, packaging, news reporting, product development, merchandising, commercial display, and so forth. Clients who purchase photographs for commercial use may include businesses such as other professional photographers, nonprofit organizations, and government agencies.

Commercial use generally does not include wedding photographs, school photographs, portraits, or fine art prints.

When you sell your photographs for commercial use, the amount on which you calculate tax may differ depending on a number of factors. In some cases, while your sale of the final photograph may be taxable, tax may not apply to your charges for conceptual or creative services and the resulting preliminary art. For an explanation of how tax applies to these types of sales, see [Sales of Photographs for Commercial Use](#).

### ***Photography for reproduction on items that will be resold***

Special rules apply to sales of photographs and reproduction rights when the photograph will be reproduced on items that will be sold. In these transactions, your charges for reproduction rights may not be taxable. To determine how to calculate tax on these transactions, see [Technology Transfer Agreements](#).

### ***Photography for the motion picture industry***

When you provide photographic services for the motion picture industry, your sales may not be taxable. For more information, see [Creative Art Services for the Motion Picture Industry](#).

### ***Some sales are not taxable***

Some of your photography-related sales may not be taxable. Common nontaxable sales include sales of photographs transferred electronically, sales for resale, sales to the U.S. government, and sales in interstate and foreign commerce. These and other common nontaxable sales are described in more detail in [Sales that are Generally Nontaxable](#).

## **Sales of photographic products**

As noted on the previous page, sales of merchandise in California are generally taxable. This includes sales of such items as:

- Photographs and slides
- Proofs
- Transparencies for copy or duplication
- Print, slide, and movie film
- Videotapes of private events, such as weddings or graduations
- Internegatives and copy negatives
- CDs, DVDs, diskettes, or other digital media (containing images or blank)
- Photo albums
- Photo mounting or framing supplies
- Picture frames

*Please note:* Charges for photographs you electronically transfer to your customers' computers by modem or direct download are generally not taxable (see [Sales that are Generally Nontaxable](#)). However, if you also provide the customer with a physical copy of the photograph such as a print transparency or an electronic copy on a digital storage medium (yours or the customer's), your entire sale is taxable.

## **Charges for labor and related expenses**

Your labor and overhead charges may be taxable depending on the product and service you provide to your customer. The following sections explain which activities are taxable.

### ***Fabrication labor***

Charges for labor to create or produce a new product, such as photographs, prints, slides, or proofs, are generally taxable. Tax applies whether you supply the materials or use materials supplied by your customer to create or produce the product.

*Exception to general rule:* Itemized charges for developing negatives from your customer's exposed film generally are not taxable.

Common examples of fabrication labor relating to sales of photographic products include:

- Printing photographs from slides, negatives, or digital storage media.
- Developing film by the reverse process method which results in film-positive images such as slides or movies.

- Mounting photographs or slides.
- Matting and framing services.
- Matte or luster spraying photos you sell.
- Making enlargements from prints, slides, or negatives.
- Printing on customer-furnished paper.
- Coloring or tinting new photos.
- Retouching negatives.
- Shooting customer-furnished film.
- Creating photographs under an independent “work made for hire” contract (a type of contract in which your client owns the copyright to any photographs you create for them).
- Cropping photographs.
- Creating slides or prints from digital images.
- Digitizing images and placing them on digital storage media, such as CDs, diskettes, flash memory cards, or DVDs, whether the media is supplied by you or your customer.

For more information on fabrication labor, see [Regulation 1526](#), *Producing, Fabricating, and Processing Property Furnished by Consumers—General Rules*, and [publication 108](#), *Labor Charges*.

### ***Taxable digital fabrication labor***

Charges for labor you perform to create or produce a digital photographic product are taxable when the product you sell to your customer is:

- A physical item such as a print or slide.
- A digital image delivered on a storage medium, such as a disk, DVD, CD, or flash memory card, whether the medium is furnished by you or by your customer.

Typical taxable fabrication labor for digital photographic products includes:

- Scanning prints or slides and saving them on digital storage media.
- Making prints or slides from digital images provided by customers.
- Taking photographs with a digital camera.
- Placing a customer’s photographic images on a CD or DVD.
- Converting a customer’s film or videotape to CD or DVD.
- Editing (cropping, retouching, or otherwise modifying) a digital image when you deliver the resulting image to your customer on a storage medium such as a CD or DVD.

Although you may separately state charges for your computer-related fabrication labor and charges for the storage medium itself, all charges are taxable.

#### *Example:*

A customer brings you ten slides and requests that you scan them and place them on a CD (which, in this case, you will provide). She also asks you to make prints of three of the images. Your charges for scanning the slides, the CD, the prints, and any related processing services are taxable, whether you itemize the charges or bill in a lump-sum amount.

### **Charges for overhead and project-related expenses**

Your charges to customers that represent your expenses for creating a photograph you sell are taxable. These expenses may include:

- Setup charges, sitting fees, and overtime charges
- Camera or other equipment rental
- Aircraft rental for aerial photography
- Travel expenses
- Prop construction or rental
- Models', technicians', or assistants' salaries or fees
- Studio rental
- Computer rental

When you rent equipment or props from a California vendor, tax will normally apply to the rental fees you pay to that vendor. You may not issue a resale certificate to avoid paying tax on those rental charges (see [Applying Tax to Purchases](#)).

### **Example**

An invoice to your client to photograph a wedding might include:

Color print film	\$100.00
Eight hours of shooting time @ \$75 an hour	600.00
Light rental	100.00
Proofs to review for selection	400.00
Custom film processing	300.00
<b>Subtotal, taxable services and products</b>	<b>\$1,500.00</b>
Sales tax (\$1,500 x 8.25%*)	123.75
<b>Total for services and proofs</b>	<b>\$1,623.75</b>

In the example above, all materials, overhead, and labor charges that produced the final product provided to the customer (proofs) are subject to tax.

\* In this example, tax is calculated at the rate of 8.25 percent, for illustration purposes, be sure to use the tax rate applicable to your sale and include any district taxes that apply. Please see [California City and County Sales and Use Tax Rates](#) for current tax rates.

*Please note:* If you charge a customer for overhead and project-related expenses, but do not deliver a photograph to your customer, tax does not apply to your charges. For example, you might shoot some advance photographs of a wedding party for a wedding that is canceled before you provide any photographs or proofs to your customer. Your charges for shooting the advance photographs would not be taxable. Or if you do a photo shoot for a customer but the only product you provide is an electronically transferred digital image (see [Sales that are Generally Nontaxable](#)), your charges would not be taxable.

### **Shipping and delivery charges**

Under certain circumstances, shipping and delivery charges are taxable. Charges for “handling” are generally taxable. For more information, see [Delivery and shipping charges](#).

### **Sales of capital assets**

Tax applies to sales of capital assets you have used in your business, such as camera, studio, or processing equipment, fixtures, computers, and furniture. If a lump-sum sale of your business includes these or similar capital assets, you must report and pay sales tax based on their fair market value.

## SALES THAT ARE GENERALLY NONTAXABLE

*This section includes information on sales that are generally not taxable, such as electronic transfers of photographs, repair labor, sales for resale, sales in interstate and foreign commerce, sales to the U.S. government, and certain other transactions.*

### Electronic transfer of photographs

Tax applies to your sale of tangible, physical products, including photographs. However, if you transfer a photograph electronically and do not include any physical product in your sale, tax does not apply. This is true whether you transfer a photograph by the “load and leave” method described below or remotely (for example, by email or file transfer protocol [FTP]). Please note that sales tax will apply if you provide your client with a copy of the electronically transferred photograph in any sort of tangible form such as a copy of the photograph on a CD or other storage medium or a physical print, copy, or negative of the photograph.

You should document any electronic transfer of a photograph so that you can show why tax does not apply to that transaction. For instance, if you electronically transmit a photograph to a customer by email, you should print out a copy of the transmittal email and retain that copy in your records. If you transfer a photograph by FTP or download it to your customer’s computer directly from your computer, a CD, or another storage medium that you keep (the “load and leave” method), you should document the transfer in your records.

One way to do that is to place a document in your project file listing the customer’s name and the date, place, and method of the transfer and noting that you did not provide the customer with any physical products in addition to the electronically transferred photograph. You should have your customer sign and date the document at the time of the transfer.

We suggest you use the following language for your documentation:

“This electronic photographic image was loaded into the computer of [client’s name] by [photographer’s name], and [photographer’s name] did not transfer any tangible personal property containing the image, such as electronic media or prints, to [client’s name].”

*Note:* As you read the rest of this publication, please remember this exclusion for electronic transfers of photographs.

### Repair labor and nontaxable services

Your itemized charges for repairing or reconditioning an item to restore it to its original condition are not taxable.

Examples include charges for:

- Airbrushing a customer’s print to restore or repair it.
- Retouching a customer’s print to restore or repair it.
- Other film or print processing charges that restore an item to its original condition.

*Example:*

A customer brings you an old photograph that is scratched and torn. She asks you to repair the photograph and retouch it so that the scratches and tears are less visible. Your itemized charges for labor to perform these services would be considered nontaxable repair labor. However, if your customer asks you to produce five duplicate prints from the photograph after it has been restored, tax would generally apply to your itemized charges for creating the new prints.

If you provide services that do not create or produce a photograph you sell, your itemized charges for those services are not taxable. This may include charges for:

- Developing customer-provided, exposed film to produce negatives.
- Services you provide or expenses you incur when you do not deliver any resulting photograph or other physical product to your customer.
- Electronically transferring photographs (see [Electronic transfer of photographs](#)).

## Sales for resale

You are not responsible for sales tax on sales you make to others who will resell the items they purchase in the regular course of their business. You must obtain a valid resale certificate from the purchaser at the time of the sale and retain that certificate in your records. The purchaser must sell the item as is or physically incorporate it into another product they sell. If the purchaser is buying a photograph only for the purpose of reproducing the image on other products that he or she will resell, you cannot sell the photograph for resale. Charges for labor to produce a photograph or service charges that are part of the sale of the photograph are generally not taxable when the photograph is purchased for resale.

### *Example:*

Your photo lab specializes in custom, poster-size prints for retail stores. A store sends you a CD containing an image, orders a color poster for resale to its customer, and provides you with a resale certificate. Your charges for printing the poster are not taxable.

For further information, see [Regulation 1668, Sales for Resale](#), and [publication 103, Sales for Resale](#).

### ***Sales of internegatives for resale***

An internegative is an intermediate image formed from a positive original image and then used to create another positive image. Generally, you may sell an internegative for resale if you obtain a resale certificate from the purchaser. Otherwise, tax applies to your charges.

You may not accept a resale certificate from a customer who intends to use the internegative to produce a print or other product. In addition, tax generally applies if you use an internegative to produce a print for a customer. Please refer to [Technology Transfer Agreements](#) and [Sales of Photographs for Commercial Use](#) if you are selling the final photograph for commercial use.

## Sales in interstate and foreign commerce

### ***Sales tax***

The sale of prints, processing services, or other goods or services to customers who live outside California is generally not taxable, provided you ship the items:

- Directly to a customer at a destination outside the state, and you
- Use your own business vehicles, the U.S. Mail, or a common carrier.

Items delivered to the California office of an out-of-state customer are not eligible for this exemption. This holds true even if the products are delivered into the customer's courier pack for shipment to the customer's out-of-state location by common carrier.

### ***Internegatives and similar products***

Photo labs commonly use products within this state to produce photographs or similar items that they will ship out of state. A common example is your use of an internegative to create a photograph when you sell both the print and the internegative to an out-of-state customer. Your sale of the photograph is an exempt sale in interstate commerce. Your sale of the internegative is a taxable sale because you use the internegative in-state before shipping

it to the customer. In contrast, your sale of an unused internegative that you ship directly to a customer located outside the state is not taxable.

To claim an exemption for interstate and foreign sales, you must retain records of delivery or shipment, such as shipping invoices, postage receipts, or other shipping documentation showing the location and method of delivery.

### **Use tax**

If you ship an item to a California resident at an out-of-state or foreign address, you should collect use tax on your sale unless you get a written statement signed by the purchaser confirming that the item is being purchased for out-of-state use for more than 90 days from the purchase date. The use tax rate in your location is the same as the sales tax rate.

For example, you might shoot a portrait of a San Francisco resident who asks you to ship the finished photograph to her vacation home in Minden, Nevada. Unless that customer gives you a signed, dated, written statement that says she will display the portrait in her Nevada house for more than 90 days after its purchase date, you must collect use tax on the sale.

Sales in interstate and foreign commerce are discussed in greater detail in [Regulation 1620](#), *Interstate and Foreign Commerce*, and [publication 101](#), *Sales Delivered Outside California*.

## **Sales to the U.S. government**

Sales tax does not apply to sales made to the U.S. government or its agencies or to sales made to certain government-related corporations, including:

- Amtrak (National Railroad Passenger Corporation).
- Federal reserve banks, federal credit unions, federal land banks, and federal home loan banks.
- The American National Red Cross, including its chapters and branches.

In addition, tax does not apply to sales made to certain unincorporated agencies or instrumentalities of the federal government.

For more information, see [Regulation 1614](#), *Sales to the United States and Its Instrumentalities*, or [publication 102](#), *Sales to the United States Government*. If you need help determining whether the exemption applies to a specific customer, please call our Customer Service Center.

## **Delivery and shipping charges**

### **Nontaxable delivery charges**

Tax does not apply to delivery or shipping charges for nontaxable sales.

Delivery charges for the shipment of taxable merchandise are generally not taxable if they are stated separately on your invoice, and you ship the merchandise directly to the purchaser using the U.S. Mail, an independent contract carrier, or a common carrier, rather than your own vehicles.

If you charge your customer more than your actual cost of delivery, the excess amount is taxable. For example, if you charge \$12.50 for shipping, but the delivery service charges you only \$10, tax would apply to \$2.50 of your delivery charge.

It is important that you use terms such as "delivery," "shipping," or "postage" on your invoice to identify delivery charges.

### ***Taxable charges related to delivery***

Other charges related to delivery, including charges for “handling,” are generally taxable, even if a postage or shipping amount is listed on the package.

### ***Combined charges***

If you combine a nontaxable delivery charge and a taxable handling charge in a single amount, for example, “shipping and handling,” you must ensure that you properly apply tax. As noted earlier, the portion of the charge that represents handling is generally taxable. The portion representing delivery is not taxable, provided it does not exceed your delivery cost (see [Nontaxable delivery charges](#)), and you do both of the following:

- Ship the merchandise directly to the purchaser using the U.S. Mail, an independent contract carrier, or a common carrier, and
- Record the actual delivery, postage, or shipping cost in your books.

### **C.O.D. fees**

Generally, tax applies to C.O.D. fees you charge your customer on a taxable sale. However, if the C.O.D. fee is not included on your invoice, and the delivery carrier collects the fee from your customer and retains it, the fee is not taxable.

More information on delivery charges is contained in [Regulation 1628, Transportation Charges](#), [Regulation 1632, C.O.D. Fees](#), and [publication 100, Shipping and Delivery Charges](#).

## REPRODUCTION RIGHTS, LEASES, AND TRANSACTIONS WITH STOCK PHOTOGRAPHY AGENCIES

*This section includes information on how tax applies to photographs sold with reproduction rights, leased photographs, and photographs sold through stock photography agencies.*

### Reproduction rights

Your charges for reproduction rights in connection with the transfer of a photograph are taxable when your client intends to reproduce, but not sell, the product on which it is reproduced. For example, you might sell a political candidate a photograph you took of her in a parade. If your sale includes the right to reproduce that photograph on the candidate's campaign literature, which she will give away, your charges for those reproduction rights are taxable. If your sale includes the transfer of reproduction rights to a client for commercial use, please see [Technology transfer agreements defined](#) for additional information.

### Leases

You may temporarily transfer a photograph to a customer for reproduction for personal or business use and charge the customer an amount for that use. Your charges for leasing photographs in this way are generally taxable. Please note that special tax rules may apply (see [Stock photography agencies](#)).

A client may want to give you a resale certificate for a lease transaction (see [Sales for resale](#)). However, the temporary transfer of a photograph under a lease does not qualify as a nontaxable sale for resale unless you are authorizing your customer to sublease the photograph to another person. Consequently, your customer should not issue you a resale certificate unless you give the customer the right to sublease the photograph.

### Stock photography agencies

You may provide images to a stock photo agency to market for you while you retain ownership of the images, or you may sell the images and all ownership rights to the agency. Tax applies to your sale when you transfer a physical product to the stock photo agency and the agency pays you for the transfer. But tax does not apply if either of the following are true:

- You transfer the photograph electronically (see [Electronic transfer of photographs](#)).
- The agency does not pay you anything when you transfer the photograph, but instead will base its payments on its sales or leases of the photograph. If the agency will lease your actual, physical photograph to customers (see previous section), the agency may give you a resale certificate (see [Sales for resale](#)).

These general rules apply whether the photograph is being transferred to the stock photo agency as rights-managed stock or royalty-free stock.

Typically, a stock photo agency will charge its customers a license fee or royalty for each use of the photo and pay you a portion of each fee it receives. The agency's charge to its customer is not taxable when the agency electronically transfers the image and does not provide a printed copy or a copy on a physical storage medium such as a CD (see [Sales that are Generally Nontaxable](#)). But if the agency transfers a physical copy of the image, its charges are taxable. Tax applies as explained in this section or the next section, Technology Transfer Agreements. Generally, the amount that a photographer receives from a stock photo agency as a fee or royalty will not be taxable.

## TECHNOLOGY TRANSFER AGREEMENTS

*This section is intended for photographers who are selling the reproduction rights to a photograph that will be reproduced on items that will be sold. If your sale does not include the transfer of reproduction rights or any assignment or licensing of copyright, the information in this section does not apply. For additional information see [Regulation 1540](#), Advertising Agencies and Commercial Artists, and [Regulation 1541](#), Printing and Related Arts.*

*Important:* Certain sales by photographers are not taxable, for example, sales with delivery to a customer outside California and sales to the U.S. government. For a more complete discussion of nontaxable sales, see [Sales that are Generally Nontaxable](#).

### Technology transfer agreements defined

When you sell, lease, license, or otherwise assign a copyright interest in your photograph, your arrangement with your client may be a “technology transfer agreement” (TTA). A TTA, as it relates to photographs, must meet all of the conditions listed below. It must:

- Be in writing;
- Assign a copyright interest in a finished photograph (often indicated by language such as “copyright,” “reproduction right,” “use for [limited time or purpose],” “license,” “license fee,” “advance royalty,” or “royalty contract”); *and*
- Show the buyer’s clear intent to reproduce and sell merchandise subject to the copyright interest.

### Examples

The following examples illustrate when transactions do and do not qualify as TTAs.

#### Sales that qualify as technology transfer agreements

*Example 1:* You provide a slide to a client under a written contract that licenses to the client the right to reproduce the image on boxes of software it sells.

*Example 2:* You provide landscape photographs to a calendar publisher under a written contract. The contract permits the publisher to reproduce the images in wall calendars the publisher will sell to retail stores.

*Example 3:* A graphic designer hires you to take photographs of a corporate client’s board of directors for the corporation’s annual report. Your contract with the designer grants the designer the right to reproduce the photographs in the annual reports the designer will sell to its corporate client.

All of these contracts qualify as TTAs: they are in writing; they assign a copyright interest; and the buyer will reproduce the images on or incorporate into products that are for sale and subject to the copyright interest.

#### Sales that do not qualify as technology transfer agreements

*Example 1:* A corporation hires you to take photographs of its board of directors for its annual report. Your contract authorizes your client to reproduce the photographs in the annual report, which is distributed free to shareholders.

*Example 2:* A client purchases photographs to use in a series of roadside billboard advertisements promoting its products.

These contracts do not qualify as TTAs because the buyer will not reproduce the images on or incorporate into products that are for sale and subject to the copyright interest. If your transaction does not meet the conditions for a TTA or fit the examples of TTAs above, it is not a TTA. Please return to [Taxable Sales of Photographs and Related Products](#) to determine where to find the information you need for your sale.

## Applying tax to a technology transfer agreement

When you sell a photograph as part of a TTA, the transaction generally involves two elements. Each element has value. The elements are:

- The actual photograph you sell, license, or lease, and
- The copyright interest you transfer to your customer that permits the customer to use the photograph as specified in the agreement.

*Important:* In a TTA, tax applies to the fair market value of the photograph itself but not to the value of the copyright interest. If you transfer a physical photograph to your client, such as a print, slide, negative or digital image on a CD, you must determine its taxable value in one of the ways explained below. But if you transfer a digital photograph in any of the ways listed below, and you do not transfer any physical products to your client, tax will not apply to your transaction:

- Remote electronic transfer to your client (see [Electronic transfer of photographs](#)).
- “Load and leave” electronic transfer (see [Electronic transfer of photographs](#)).
- Temporary transfer of the finished photograph on a digital storage medium, provided your client returns the medium to you within a 30-day billing cycle (or within a longer time frame if necessary to allow the client to copy the digital file).

The table below shows how to determine the tax due on a photograph you sell, lease, or license in a technology transfer agreement.

Applying tax: technology transfer agreements	
Written contract terms	The taxable fair market value is
Includes a charge for the sale or lease of the photograph and a separate charge for the reproduction rights.	The separately stated sale or lease price for the photograph.
Charges are in a lump sum.	<ol style="list-style-type: none"> <li>1. The price at which you have sold or leased, or offered for sale or lease, that photograph or “like photographs” to an unrelated third party, when either of the following is true: <ul style="list-style-type: none"> <li>• You did not transfer reproduction rights.</li> <li>• You transferred reproduction rights and separately stated the selling price of the photograph.</li> </ul>                     (See <a href="#">What is a “like photograph?”</a>)                 </li> <li>2. If you can’t determine a separate price based on prior sale or lease price, 200 percent of the combined cost of materials and labor used to produce or acquire the photograph. (See <a href="#">Establishing the cost of labor and materials.</a>)</li> </ol>

### What is a “like photograph?”

It may be a challenge to determine whether the photograph you are selling in a TTA is “like” one you have previously sold or leased, or offered for sale or lease, as described in the table above. “Like photographs” do not necessarily need to be of the same subject matter, but they should be of similar artistic quality and desirability to the general public or photography collectors.

*Example 1:* Photo sold in TTA is a “like photograph” to one sold in another transaction. You sold a landscape print to a photography collector for \$150 in May 2004. That sale did not include the transfer of any reproduction rights. In July 2006, you sell an architectural photograph to a commercial client in a TTA. While the subject matter of that photograph is not the same as the landscape you sold in 2004, you believe the photographs are of the same artistic

quality and that you could sell the architectural photograph to a collector for the same amount as the landscape. You conclude that the architectural photograph has the same fair market value as the landscape and you can clearly explain your reasoning in your job files. Based on these factors, you use \$150 as the taxable value in the TTA.

*Example 2:* Photos sold in TTA are not “like photographs” to an earlier sale. You have created a series of antique-looking sepia-toned photographs of various local historical buildings. You have the images printed on postcards and place the cards in a local souvenir shop on consignment. The shop also sells postcards created by other photographers and artists that show the same buildings. All of the postcards retail for \$2.50. You receive ten percent of the selling price of your postcards. Later, you are commissioned to shoot a series of fashion images using the buildings as backdrops. You sell the photographs in a TTA. Since you believe that the photographs are the equivalent of art prints that sell for \$150, you cannot use the selling price of your postcards as the basis for those photographs’ taxable value. If you have made sales of equivalent art prints, you may use their selling price in determining the photos’ fair market value in the sale. Otherwise, you must use the taxable fair market value in the table on the previous page.

### ***Establishing the cost of labor and materials***

#### **Materials**

The cost of materials includes your cost for items used in producing the photograph or incorporated into it. Examples include:

- *For a photograph you provide on digital media:*
  1. Your cost for the blank diskette, flash memory, removable disk, DVD, or CD; and
  2. Your cost for leasing or buying props or lighting equipment for the specific photo shoot.
- *For a photographic print or transparency:*
  1. Your cost for paper, ink, film, and chemicals incorporated into the final print or transparency; and
  2. Your cost for the film used; and
  3. Your cost for leasing or buying props or lighting equipment for the specific photo shoot.

#### **Labor**

The cost of labor includes any costs to you for the labor used to create the photograph, such as labor you purchase from a third party or work performed by your own employees. This includes costs for work performed by people who create the finished photograph as well as those who share in its creation, such as models and lighting technicians.

The cost of labor does not include any of the following:

- The value of your own labor, if you are a sole proprietor
- Travel expenses such as airfare and car rental
- Meals and lodging expenses

### ***Licensing arrangements may be a lease***

If your licensing agreement requires your client to return your print or transparency, the transaction is considered a lease. Tax applies as it does for any other TTA (see [Electronic transfer of photographs](#)).

A client may want to give you a resale certificate for a lease transaction (see [Sales for resale](#)). However, the temporary transfer of a photograph under a lease does not qualify as a nontaxable sale for resale unless you are authorizing the client to sublease your photograph to a third person in the same form you are providing it. But if you are not authorizing that kind of subleasing, you should not accept a resale certificate.

***Sales for resale***

A photograph sold under a TTA will normally not qualify as a sale for resale, since your customer will use the image to create or produce other products to sell. In addition, your customer cannot pass ownership or possession of the photograph to another person unless you specifically allow the customer that right.

***More information on TTAs***

TTA transactions can be complicated. If you have any questions about how tax applies in a particular situation, please call our Customer Service Center or write to request written advice (see [Written tax advice](#)).

## SALES OF PHOTOGRAPHS FOR COMMERCIAL USE

This section is intended for photographers who are working for a client to create photographs for commercial use, when the image will not be reproduced on items that will be sold. If you are selling any reproduction rights to your photograph for commercial purposes and the image is intended for reproduction on products that will be sold, read the previous section, [Technology Transfer Agreements](#). You may also obtain [Regulation 1540](#), Advertising Agencies and Commercial Artists, and [Regulation 1541](#), Printing and Related Arts.

**Important:** Certain sales by photographers are not taxable, for example, sales to the U.S. government. For a more complete discussion of nontaxable sales please see [Sales that are Generally Nontaxable](#).

### “Commercial use,” defined

For sales and use tax purposes, “commercial use” includes promotion, publicity, marketing, publishing, advertising, corporate communications, packaging, news reporting, product development, merchandising, commercial display, and so forth. Clients who purchase photographs for commercial use include businesses (including professional photographers), nonprofit organizations, and government agencies.

Commercial use does not include wedding photographs, school photographs, portraits, or fine art prints. If you make these types of sales, please see [Taxable Sales of Photographs and Related Products](#), for information on applying tax to your sales.

If your photographs are purchased for commercial use, you probably provide your client with services to develop the idea, concept, look, or message that will be embodied in the finished photograph (or finished artwork). Generally, you would convey these concepts and designs to clients as preliminary art that you show them for their approval and review prior to providing a finished product. This section will explain how tax applies to your concept and design charges, preliminary art charges, and charges for the finished artwork.

### How does tax apply?

#### Basics

The table below provides a basic illustration of how tax applies to photographs you sell for commercial use. It is provided as an introduction only. Be sure to read the rest of this section to determine how tax applies to your charges.

Creating and Selling a Photograph for Commercial Use	
Photographer’s service or product	How tax applies to charges
Development of ideas, concepts, looks, or messages for a client. Such as, proofs or other preliminary work for client review and approval.	Charges not taxable unless you permanently transfer possession or ownership of proofs or other preliminary work products to your client.
Final photograph.	Charges taxable, based on value of photograph (see text).

#### Types of charges

##### Preliminary art vs. finished art

When you provide concept or design services to a client in the process of creating a photograph for commercial use, you generally will create “preliminary art” as well as “finished art.”

- Preliminary art is the product of your concept or design services. It is physical artwork you use to convey your original ideas, concepts, looks, or messages to a client for review and acceptance before you prepare the final photograph. Typically, preliminary art is not suitable for reproduction. For photographers, preliminary art often includes contact sheets, low-resolution images produced from digital sources, direct positive prints, printed

copies of rough digital layouts, and proof prints from film or slides. Tax does not apply to your charges for services for creating preliminary art provided certain conditions are met (see [How tax applies to preliminary art](#)).

- Finished art is the actual product you sell or lease to a client for commercial reproduction or display. You will generally produce the finished art after your client has reviewed the preliminary art you developed to convey ideas and concepts and approved your moving forward to produce a final product. Examples of finished art produced by photographers include finished photographs, transparencies, high-quality inkjet prints, and high-resolution digital images. Your charges for this work are generally taxable based on the value of the finished photograph, as explained later in this section (but remember the [Electronic transfer of photographs](#) exception).

The following sections explain how tax applies to each type of art.

### ***How tax applies to preliminary art***

*Separately stated* charges for concept and design services that create preliminary art are not taxable if all of the following conditions apply:

- You create the preliminary art at the direction of a commercial client or on a commercial commission.
- The preliminary art is intended to convey your ideas, concepts, looks, or messages for the client's project.
- You present the preliminary art to your client for acceptance or approval.
- You retain ownership and permanent possession of the preliminary art used to convey the idea or concept. (But you may *temporarily* transfer it directly to your client or to an advertising agency, a graphic design firm, another commercial artist, or another party involved in the design process.)
- Nothing in your contract transfers to your client the preliminary art or the right to *permanently* own it. However, you may transfer to your client the ownership of the intellectual property embodied in the art (ideas, concepts, designs, and so forth) or agree not to use the preliminary art for any other client.

If your client keeps or owns all of the products of your creative work, your full charge for that work is taxable. If you transfer permanent possession or ownership of a portion of the preliminary art (for example, some of the proofs), tax applies to your itemized charge for preliminary art in proportion to the amount of art you transfer. So, if the client keeps or owns 50 percent of the products, 50 percent of your charge is taxable.

You are the consumer of supplies and materials you use to create nontaxable preliminary art, including film, paper, chemicals, internegatives, ink, and so forth. Purchases of items you use in creating preliminary art do not qualify as nontaxable purchases for resale. Similarly, you are the consumer of equipment you rent or lease to produce preliminary art.

### ***Examples***

#### **Photographs that qualify as preliminary art**

A company hires you to take photographs to capture images of the four seasons for an advertising campaign. You present 16 proof prints to the client for review and approval. The proofs show several concepts or ideas for each season. Your client selects a set for further development and you keep all the proofs. Your itemized charge for services to create this preliminary art would not be taxable. But if your client decided to keep eight proofs (half of total), half of your preliminary art charge would be taxable.

#### **Photographs that do not qualify as preliminary art**

*Example 1:* A Sierra-based nonprofit organization announces that it is purchasing photographs of the Sierra for permanent display in its office. On a freelance basis, you shoot photographs of Sierra wildflowers and submit five prints to the organization, which buys three of them. None of your work qualifies as preliminary art because you did not shoot the photographs at the direction of the organization. Your transaction is a simple taxable sale covered by the rules in [Taxable Sales of Photographs and Related Products](#).

*Example 2:* Based on a review of your portfolio, a client hires you to take and print a photograph of his office building for use in a company training manual. You use your creative skill to select the best light and angle for the shot, shoot a full roll of film, make a contact sheet, select one image, and print it for your client's use. Because you are providing a photograph of a specific object as specified by your client rather than conveying a concept to your client, your photographic work does not qualify as conceptual services. The contact sheet is not preliminary art. Your transaction is a straightforward taxable sale covered by the tax rules in [Taxable Sales of Photographs and Related Products](#).

### Charging for preliminary art

As explained on the previous page, itemized charges for preliminary art are not taxable unless you transfer ownership of all or some of the preliminary photographs or proofs to your client. If you itemize your charges in your invoice or contract, be sure to identify charges for preliminary art as "design charges," "preliminary art," "concept development," or another description that clearly indicates the charges are for the development and creation of preliminary designs and not the finished photograph.

If you prefer not to itemize your charges for preliminary art, you may bill your customer one lump-sum amount for preliminary and finished art. For lump-sum billing options, see [Billing methods—photographs sold for commercial use](#).

### How tax applies to finished art

As explained under [Types of charges](#), finished art is the final photographic product you sell or lease to a commercial client for reproduction or display. Typically, photographers deliver finished art to clients in one of the following forms:

- A printed image (chemical-process print or high-quality digital print).
- An exposed piece of film (transparency, slide, film positive, film negative).
- A digital file on a storage medium such as a CD, DVD, flash memory, or removable disk.
- A digital file you electronically transfer to the client by modem or in person from a CD or other electronic storage medium that you keep (not taxable, see [Electronic transfer of photographs](#)).

Tax generally applies to your charges for the sale of finished art. This holds true whether your client keeps the finished art (a sale) or returns it to you after reproducing it (a lease). The amount of tax due depends on the value of the art, which in turn depends on how you bill your client (see [Billing methods—photographs sold for commercial use](#)).

### License to use a photograph

You may sell or lease photographs along with a right to reproduce them (sometimes called a "license to use"). A license normally transfers some or all of your copyright interest in the photographic image. The reproduction right you transfer to the client may be broad or it may be limited and very specific. Licenses often specify the media in which the photograph can be reproduced, geographic area, frequency or duration, exclusivity of use, reproduced size or resolution, credit language, and so forth.

If your license is intended to allow reproduction of the photograph on items that will be sold, it may be a TTA. See the previous section for the application of tax to technology transfer agreements. If it is not a TTA, amounts you charge for the license are taxable.

*Please note:* If a licensing agreement requires a buyer to return to you the physical property on which you transferred the image (print, digital storage medium, transparency), the transaction is considered a lease. A client may want to give you a resale certificate for a lease transaction (see [Sales for resale](#)). But the temporary transfer of a photograph under a lease does not qualify as a nontaxable sale for resale unless you are authorizing the licensee to sublease the photograph to another person. Similarly, you should not issue a resale certificate when you temporarily possess a photographic image unless you have permission to sublease it.

## Billing methods—photographs sold for commercial use

Your charges for a commercial photography project may cover all of the steps in the creative process, from your initial concept to the final sale of a photograph that qualifies as finished art. As explained in the following sections, you can itemize your bills or charge your customer a lump-sum amount. The amount of tax you owe on a sale can vary depending on how you bill.

The table below provides a quick guide to how tax applies to different types of billing methods. Be sure to read the explanation of each method in the text rather than base your tax decisions on the summary table alone.

Billing methods—photographs sold for commercial use		
Billing method	How tax applies (see text)	See explanation
Itemized bill: Separate charges for preliminary art/conceptual services and finished art.	Tax applies to charge for finished art.	Itemized bill
Lump-sum bill method 1: Value of finished art is 25% of total charge. (Can be used only in certain circumstances.)	Tax applies to 25% of total charge.	Lump-sum bill combining charges for preliminary and finished art
Lump-sum bill method 2: Value of finished art based on its retail value.	Tax applies to retail value of finished art based on the actual cost of production, markup, and any taxable reproduction rights.	Method 2, "Actual Basis": Tax based on retail value of finished art

### **Itemized bill**

When you itemize charges for conceptual services/preliminary art and the finished photograph, your charges for the finished photograph are taxable. Your charges for conceptual services are not taxable, assuming that you do not transfer ownership or permanent possession of the preliminary artwork to your client. (See [How tax applies to preliminary art](#), for additional conditions.) Your charge for a finished photograph should reasonably reflect the cost of creating it plus a markup for profit. Any additional itemized amounts you charge your customer for the work required to produce the finished photograph are also taxable (see [Types of charges](#)). As noted earlier, you should be sure to describe charges for preliminary art as "design charges," "preliminary art," "concept development," or another description that clearly indicates the charges are for the development and creation of preliminary designs and not finished art.

### **Lump-sum bill combining charges for preliminary and finished art**

There are two options for determining the taxable amount when you bill a lump-sum amount that includes charges for both preliminary and final art. The first method allows you to use a fixed percentage of 75 percent of the total charge as the value of the nontaxable conceptual services and preliminary art, provided that your bill includes charges only for conceptual services and preliminary and final art. The second method requires you to calculate the retail value of the photograph.

You must use this second method if your lump-sum charge includes charges for items other than preliminary and final art, for example, a charge for printed matter or film.

### **Method 1, "75/25": Tax based on 25 percent lump-sum charge**

If you charge your client one lump-sum amount for preliminary and final art, you may be able to use the "75/25" billing method. When you use this method, state law presumes that tax applies to 25 percent of your total charge. The law considers the remaining 75 percent of your charge to be for nontaxable conceptual services and preliminary art. Be sure to retain documents in your records to show that the 75/25 breakout is reasonable for your project.

If your bill includes charges for anything other than preliminary and final art (see list below), you must use the actual cost basis method (see Method 2, Actual Basis).

You cannot use the 75/25 tax method if:

- Your bill includes any charges not related to the creation of preliminary and finished art (example: a combined lump-sum charge for photographs and printed brochures).
- Your bill lists separate charges for intermediate production aids. Intermediate production aids include any items you use to produce the final finished art that are not actually incorporated into it, such as film, internegatives, film positives, certain chemicals, photo engravings, illustrations, and so forth.
- Your bill lists separate charges for any conceptual services or other nontaxable charges in addition to the combined charge for preliminary art and finished art.
- Your cost for the intermediate production aids to produce the finished photographs is more than 25 percent of your lump-sum charge.

*Example:*

Following your client's approval of proofs illustrating your ideas for photos for a trade show booth, you create ten large prints. Your total, lump-sum charge for the job is \$15,000, which covers only your charges for creating and producing the photographs. You may use the 75/25 method to determine the sales tax due on the transaction.

- \$11,250 of your charge ( $\$15,000 \times 75\%$ ) would not be taxable as preliminary art.
- \$3,750 of the charge ( $\$15,000 \times 25\%$ ) would be taxable as finished art.

Calculating tax at the tax rate of 8.25 percent, tax due on the transaction would be \$309.38 (rate used for illustration only).

## Method 2, "Actual Basis": Tax based on retail value of finished art

Tax applies to the total charge for the retail sale of the finished art. Your charge for the finished art must include all of the following:

- Cost of direct labor to create the finished art, including amounts you pay to third parties, such as model or technician fees. The cost of labor also includes the value of your own labor—even if you are a sole proprietor.
- Cost of other direct charges required to create the finished photograph. This includes lighting or other equipment rental, studio rental, and prop construction or rental. Travel expenses such as airfare and car rental, or meals and lodging, are also included for the purposes of calculating the value of finished art.
- Cost of items you purchased and physically incorporated into the finished art, such as paper, inks, and certain chemicals (see [Appendix](#)).
- Cost of any "intermediate production aids" used to make the finished art. Intermediate production aids include any items you use to produce the final finished art that are not actually incorporated into it, such as film, internegatives, film positives, certain chemicals, photo engravings, illustrations, and so forth.
- A reasonable markup based on your operations.
- Charges for taxable reproduction rights.

The difference between the calculated charge for the finished art and your total charge is considered the nontaxable charge for your conceptual services/preliminary art.

*Example:*

Following your client's approval of preliminary art illustrating your ideas for a public relations campaign, you create finished art: 15 prints of models posing in a park. The photos will be used on advertising billboards. Your total, lump-sum charge for the job is \$15,000. The costs related to producing the photograph and reproduction rights were:

Direct labor to produce the photographs	\$ 3,500.00
Material costs for paper and incorporated chemicals	75.00
Intermediate production aids (internegatives)	50.00
<b>Subtotal</b>	<b>3,625.00</b>
Markup for operations (15%) <sup>1</sup>	x 1.15
<b>Subtotal</b>	<b>\$ 4,168.75</b>
Limited reproduction rights	+ 3,000.00
<b>Taxable amount</b>	<b>\$ 7,168.75</b>
Tax due at rate of 8.25% <sup>2</sup>	\$ 591.42

<sup>1</sup> Markup of 15% shown for example only. Your markup may be higher or lower.

<sup>2</sup> Rate shown for illustration only. The rate for your sale may be different.

### ***Sales for Resale***

A photography sale may qualify as a nontaxable sale for resale if the purchaser intends to sell the finished photograph as is or physically incorporate it into another product that will be sold.

For example, you may create a photograph for an interior designer, who will frame the photograph and sell it to a car dealer for display in its sales office. Since your photograph will be resold rather than reproduced, you may accept a resale certificate from the designer. None of your charges to the designer would be taxable. The designer would owe sales tax on the sale of the photograph to the car dealer.

*Important:* Other types of sales may not be taxable. For example, if you will be selling your photograph to a customer with delivery outside California or to the U.S. government, please see [Sales that are Generally Nontaxable](#).

## CREATIVE ART SERVICES FOR THE MOTION PICTURE INDUSTRY

This section addresses the special rules that apply to photographers who work in the motion picture industry. For more information, please see [Regulation 1529](#), Motion Pictures.

### “Creative art services” and “qualified motion pictures” defined

Sales tax does not apply to “creative art services” provided by a photographer in connection with the production, distribution, or exploitation of a “qualified motion picture.” Creative art services are services performed only to convey ideas, concepts, looks, or messages, as opposed to services that create photographic products your client will reproduce or display.

Qualified motion pictures must be intended for commercial use. They include:

- Motion pictures produced for display at theaters, amusement parks, or on commercial carriers; television shows including closed circuit and broadcast; commercials; trailers; television spots; specials; featurettes; “promos;” “sneaks;” corporate training and sales presentations; video press kits; music videos; and special effects, titles, and credits on film, tape, or other motion picture media, including digital media.
- Original and adapted versions including productions adapted to another language or medium.
- Motion pictures produced for the federal government or its instrumentalities, foreign governments, and state and local governments and their political subdivisions.

Films and videos created for private, noncommercial use, such as wedding videos, are not qualified motion pictures.

Your creation of exposed film, photographs, negatives, transparencies, prints, scans, laser graphics, visual prototypes, and electronic imagery can qualify as creative art services as long as the client will not reproduce or display your work.

### Applying tax

When you provide qualifying creative art services, you are performing nontaxable services rather than selling physical products. This is true even if you transfer the product of the creative art services to your client. Because you perform nontaxable services, you are considered the consumer of the physical items used in providing the creative art services, such as CDs, chemicals, paper, and so forth. Your purchases of those items do not qualify as nontaxable purchases for resale.

If your client later reproduces or displays the products of your services, the client owes use tax based on the amount paid to you for the creative services.

#### *Example:*

You contract with a movie studio to take photographs of the leading actors during the filming of a feature film. The photographs are intended to convey your ideas about possible ways to advertise the film. As part of your contract, you provide the client with the rolls of exposed film and several developed photographs. Although the photographs are the quality of finished photographs, your activities qualify as creative art services since you are transferring the film and photographs only to convey ideas and concepts and the movie studio will not reproduce or display them. The transfer of the photographs is not a taxable sale and you are the consumer of the paper and chemicals used in producing the photographs.

## APPLYING TAX TO PURCHASES

*This section addresses purchases commonly made by photography-related businesses. It includes information on purchases of film, services, chemicals, and supplies related to your sales of photographs. For more information, see [Regulation 1528](#), Photographers, Photocopiers, Photo Finishers, and X-Ray Laboratories, and [Regulation 1540](#), Advertising Agencies and Commercial Artists.*

### Purchases for resale

You may issue a resale certificate to your vendor when you buy items you will resell rather than use. This allows you to make the purchase without paying tax until you sell the product. You may issue a resale certificate to purchase:

- Products you sell to customers as is.
- Products that become a physical part of photographs and finished art you sell, such as slide mounts, photographic paper, frames and framing material, spray coatings, printer paper and inks, and mounting and matting supplies.
- Digital storage media (DVDs, CDs, flash memory, diskettes, removable disks) you sell to customers rather than retain in your business.
- Fabrication labor.
- Chemicals that become a physical part of photographs or finished art you sell (see [Appendix](#)).
- Packaging supplies you use to wrap merchandise you sell.
- Items you use exclusively for demonstration and display while you hold them for sale.
- Film, in some circumstances (see [Film, Internegatives, and Copy Negatives](#)).
- Internegatives, copy negatives, and similar products you will sell before making any use of them (see [Film, Internegatives, and Copy Negatives](#)).

For information on purchases for resale, see [publication 103](#), *Sales for Resale*, or [Regulation 1668](#), *Sales for Resale*.

### Taxable purchases

Some of your purchases are taxable. If you know a purchase is taxable at the time you make it, you should not issue a resale certificate to your vendor. But if you buy from an out-of-state vendor who does not charge California tax, or you buy merchandise for resale but use it before you sell it, you must report and pay use tax with your sales and use tax return. To do that, list the cost of your purchase under "Purchases subject to use tax" on the return for the reporting period in which you used the item. The rate for use tax is the same as the rate for sales tax in your location.

Tax applies to amounts you pay for:

- Photographic materials and supplies that do not become a physical part of products you sell, such as mask charts, negative glassiness, sensitized test sheets, and various kinds of tape.
- Materials and supplies that become a physical part of nontaxable preliminary art (see [How tax applies to preliminary art](#)). See the [Appendix](#) for chemical details.
- Film, in some circumstances (see [Film, Internegatives, and Copy Negatives](#)).
- Chemicals that do not become a physical part of photographs or finished art you sell (see [Appendix](#)).
- Leasing or renting equipment, provided the owner of the equipment charges you an amount for tax.
- Items you use for demonstration and display unless you will also offer them for sale.
- Items you use for donations, gifts, or other personal use (donations to charitable organizations may not be taxable; please call our [Customer Service Center](#) for guidance).
- Equipment you use in your business rather than sell, such as office supplies, furniture, props, lighting, back-

drops, film and print processing equipment, computers, mounting and framing equipment, order forms, printers, and so forth.

- Purchases from out-of-state vendors that would be taxable if you made them in California (see [Purchases from out-of-state retailers](#)). This includes purchases made by phone, mail order, or over the Internet.

### ***Cost of tax-paid purchases resold prior to use***

If you pay an amount for tax when you buy an item then later sell it before using it, you may take a deduction on your sales and use tax return, under “Cost of tax paid purchases resold prior to use.”

#### *Example:*

You pay an amount for tax when you buy a stack of CDs you intend to use in your business. You pay \$20.00 for 50 CDs. Later, you sell ten of those blank, unused CDs to a customer in a taxable transaction. You would report the amount you charged for the CDs in “gross receipts” on your sales and use tax return and take a \$4.00 “Cost of tax-paid purchases resold prior to use” deduction for their purchase price (10 CDs sold = 20% of total 50 CDs purchased; \$20.00 total price x 20% CDs sold = \$4.00).

For more information on use tax, see [publication 110](#), *California Use Tax Basics*, and [Regulation 1685](#), *Payment of Tax by Purchasers*.

### ***Film, internegatives, and copy negatives***

#### **For resale**

In general, you may not buy film, internegatives, or copy negatives for resale unless you will sell the same physical item to your customer prior to use. For example, you may use a resale certificate to buy any film you will sell unexposed to customers. You may also use a resale certificate to buy an internegative or copy negative if you will not use the negative before selling it.

You should not use a resale certificate to purchase film or another intermediate production aid if you retain ownership to that aid and use it to create preliminary art or finished art.

#### **For your own use**

Whether you may use a resale certificate to buy film you expose and process, or internegatives and copy negatives generally depends on the final product you will sell. Definitions of the different types of film, and a table showing how tax applies to your film purchases, are found on the next page.

#### **Definitions—types of film**

*Color-reversal films.* When developed, these films generally become positive transparencies, slides, or movies. The film itself does not become a part of subsequent prints.

*Negative films.* When developed, these films usually become negative transparencies that are used to make prints. The film itself does not become a final ingredient or part of the prints.

*Polaroid-type films.* These films are products that use the Polaroid process to become prints “instantly” after exposure.

### Issuing resale certificates for purchases of film, internegatives, and copy negatives

Type of film	Final product you will sell to customer	Issue resale certificate for purchase? <sup>1</sup>
color-reversal	slides or movies only	yes
	prints	no
negative	negatives only	yes
	prints	no
Polaroid	Polaroid prints	yes <sup>2</sup>
internegative/ copy negative	negatives only	yes
	prints	no <sup>3</sup>

<sup>1</sup> If you pay an amount for sales tax or use tax on a film purchase but resell the film prior to using it, you may take a deduction on your sales and use tax return, under “Cost of tax-paid purchases resold prior to use” (see [Cost of tax-paid purchases resold prior to use](#)).

<sup>2</sup> If you use Polaroid film to check exposure or for another purpose and do not sell the Polaroid prints to your customer, you may not buy the film for resale.

<sup>3</sup> If you transfer ownership of the internegative or copy negative to your customer before you use it to make a print, you may buy the negative for resale.

#### **Purchases from out-of-state retailers**

Tax applies to out-of-state purchases the same way it does to purchases within California: a purchase that is taxable in California is taxable when you make it from an out-of-state vendor. In general, you will owe use tax if you purchase merchandise from an out-of-state retailer without paying California tax and use the merchandise in California for a purpose other than resale. You must report and pay the tax on your sales and use tax return.

Some out-of-state retailers are authorized to collect and pay California use tax. If your sales receipt indicates that the retailer collected the correct amount of California tax on your purchase, you do not need to report that purchase on your return. However, if the retailer did not collect enough tax, you would owe any additional tax that should have been charged.

#### **Credit for paying another state’s tax**

If you were required to pay, and did pay, another state’s sales tax on a purchase on which you will owe California use tax, you may claim a credit against your use tax liability by doing the following:

- Report the amount of the purchase under “Purchases subject to use tax” on your return.
- Deduct the amount of tax paid under “Sales and use taxes imposed by other states” on your return. You may claim a deduction up to the amount of California use tax due on the purchase.

You may not claim this deduction as a credit against your sales tax liability. For more information on purchases from out-of-state retailers, see [publication 110, California Use Tax Basics](#).

## GENERAL TAX REPORTING REQUIREMENTS

*This section provides general information on how to report your sales and purchases on your sales and use tax return. It also includes information on invoicing customers, applying tax to credit sales, and claiming deductions and exemptions on your return. For more information, see [publication 73](#), Your California Seller's Permit.*

### Including an amount for tax in your charges

You are responsible for paying sales tax on all of your taxable sales. But you can collect tax from your customer equal to the amount you will owe on each sale. This is called "sales tax reimbursement." You may add the tax amount to your taxable charges, being sure to itemize it on your invoices or receipts. Or, you may include it in your charges. If you choose the latter method, you must either post a visible sign stating, "All prices of taxable items and services include sales tax reimbursement calculated to the nearest mill," or include a similar statement on your sales invoices or receipts.

### Tax due with your return

You must report all of your sales (gross receipts) on your sales and use tax return, including nontaxable sales. The tax due with each return is based on your total gross receipts for the period less deductions for allowable nontaxable sales and other adjustments. You may not deduct any expenses related to your services—such as travel expenses, model fees, phone charges, equipment rentals, and so forth. Some common exemptions and deductions are noted below.

### Common deductions and exemptions

Common deductions and exemptions include:

- Sales for resale
- Cost of tax-paid purchases resold prior to use
- Repair labor and nontaxable services
- Preliminary art
- Sales in interstate and foreign commerce
- Sales to the U.S. government
- Cash discounts on taxable sales

#### ***Bad debts***

If you paid tax on a sale and then were not able to collect payment, you may claim a deduction for the bad debt. Bad debts may take the form of:

- Checks returned unpaid by the purchaser's bank that you have determined to be uncollectible, or
- Accounts from charge or credit sales found worthless.

Before you take the deduction you must charge off the bad debt for income tax purposes. You should claim the deduction on the sales and use tax return you file for the period in which you found the amount worthless and charged it off for income tax purposes. If you are not required to file income tax returns, you must charge off the debt amount following generally accepted accounting principles. If the tax rate has changed since you made the original sale, you must adjust the amount of the bad debt deduction to conform to the tax rate in effect at the time of the sale. You cannot deduct amounts you paid to collect the funds due. If you later collect the money due for a bad debt (including worthless checks), you must include in your taxable gross receipts any amount you previously claimed as a bad debt deduction.

*Please note:* There are many rules governing deductions for bad debt losses. For help, see [Regulation 1642](#), *Bad Debts*, or contact our [Customer Service Center](#).

## Credit sales and installment payments

Tax is due for the period in which you make a sale, regardless of when you receive payment. The sale takes place when you transfer ownership or possession of the photograph to your customer. You should not report deposits you receive from customers for future delivery of photographs until the sale is complete.

### *Example:*

As a wedding photographer, you customarily take deposits for your services, requiring 50 percent of your payment in advance and 50 percent when you deliver the photographs to the customer. You may charge \$2,000 for photographs of a June wedding, taking a deposit of \$1,000 from a customer in March. The customer pays the balance due when you deliver the photographs in June. You must report the entire \$2,000 charge on the sales and use tax return you file for the tax reporting period that includes the month of June.

## Required registration to report use tax

California law requires a “qualified purchaser” to register with the BOE and annually report and pay use tax directly to the BOE. Reporting and paying the use tax is done through our efilings system. A “qualified purchaser” includes any business with at least \$100,000 in annual gross receipts from business operations. Gross receipts are the total of all receipts from both in-state and out-of-state business operations. For additional information, see [publication 126, Mandatory Use Tax Registration for Service Enterprises](#).

## Records

Be sure to keep complete records of your sales and purchases. For nontaxable transactions, your records should clearly indicate the reason the transaction was not taxable. If you transfer photographic images electronically, for example, you should retain evidence that such a transfer occurred (see [Electronic transfer of photographs](#)).

You should keep required records for at least four years unless we give you specific, written authorization to destroy them sooner.

*Exception:* Records that cover reporting periods before January 1, 2003, may be covered by an extended statute of limitations if you did not participate in the 2005 tax amnesty program. You must keep those records for at least ten years.

If you are being audited, you should retain all records that cover the audit period until the audit is complete, even if that means you keep them longer than four years. In addition, if you have a dispute with us about how much tax you owe, you should retain the related records until that dispute is resolved. For instance, if you appeal the results of an audit or another determination (billing), or you file a claim for refund, you should keep your records while that matter is pending.

For more information on recordkeeping, please see [publication 116, Sales and Use Tax Records](#), or [Regulation 1698, Records](#).

## APPENDIX: PHOTOGRAPHIC CHEMICALS

You may purchase any photographic chemical for resale if you will sell it unused to your customers. However, when you buy chemicals to use in film or print processing, other factors determine whether you may issue a resale certificate to your supplier.

### Basic categories

#### **Chemicals consumed in creating photographic products**

Some photographic chemicals perform a processing function but do not become a physical part of the finished film or print (see [Chemicals that do not become a part of film or paper during processing](#)). You cannot purchase these chemicals for resale unless you plan to sell them unused.

#### **Chemicals that become a physical part of photographic products**

Certain chemicals used in processing photographic film and prints become a physical part of the processed film or print. Under certain circumstances, you may purchase these chemicals for resale when you will use them in processing photographic products you sell (see [Chemicals that become a physical part of the film or paper during processing](#)).

### Buying chemicals that become a physical part of the processed film or print

You may purchase for resale those chemicals that become a physical part of the processed film or prints during processing, provided you do both of the following:

- You buy the chemicals to use in processing film, slides, or prints you will sell directly to your customer.
- You do not use the film, slides, or prints before you sell them to your customer.

If you use a photographic product before you sell it to your customer, you generally may not purchase for resale any chemicals you use in creating that product (for example, film used to create a print you sell). However, if you transfer ownership of the intermediate product to your customer before you use it, you may purchase for resale those chemicals that become a physical part of the product (see Example 3 below).

#### **Examples**

##### *Example 1: Freelance photographer who sells slides*

You are a freelance photographer who sells mounted slides directly to outdoor magazines without first making prints. If you process your own slides, you may issue a resale certificate to purchase the processing chemicals that will become a physical part of the finished slides you process and sell. If you have the slides developed by a photo lab, you may issue a resale certificate to the lab.

##### *Example 2: Photo lab developing negative film*

Your photo lab performs negative development of customer-furnished exposed film, an activity that is not taxable. You are considered the consumer of the chemicals you use in developing the negative film and cannot issue resale certificates when buying those chemicals. However, you may issue a resale certificate when you buy processing chemicals that will become a physical part of final prints you sell.

##### *Example 3: Photo processor with contract that transfers ownership to intermediate production aids to customer prior to use*

Your contract with a customer provides that ownership to all intermediate production aids passes to the customer prior to their use. You make an internegative for the customer and use it to produce a print. Since you have transferred ownership of the internegative to the customer before using the internegative, you may purchase for resale any processing chemicals that will become a physical part of the internegative.

*Example 4: Photo supply store that sells chemicals and offers in-house processing*

You own a photographic supply store that sells film, cameras, chemicals, and other photographic materials. The store also provides in-house custom film-processing and printing services. You may buy for resale any chemicals you will sell directly to your customers.

However, for those chemicals you will use in your own darkroom, the other principles set forth here apply (see [Basic categories](#)). If you buy full cases of chemicals that you sell to customers and use in your darkroom, you may want to follow one of the following practices:

- Purchase all of your chemicals tax-paid and then claim a “Cost of tax-paid purchases resold prior to use” deduction for the chemicals you sell in your store (see [Cost of tax-paid purchases resold prior to use](#)), or
- Purchase all of your chemicals for resale, then pay use tax for the chemicals you use in a taxable manner in your darkroom.

*Example 5: Photographer creates preliminary art and finished photographs for commercial display*

You are a photographer who contracts to create design concepts and finished photographic prints for display at a fashion show. You may buy for resale the chemicals that are incorporated into the final prints you sell. You are the consumer of all chemicals you use to create the preliminary art for the job and must pay tax on their purchase.

Chemicals that become a physical part of the film or paper during processing	
Photographic products	Types of chemicals that become a physical part of the products during processing
black and white negatives	fixers with hardener toners
black and white prints	fixers with hardener toners
color negatives	color developer/replenisher stabilizer/replenisher
color prints	color developer/replenisher stabilizer/replenisher
color slides or movies	color developer/replenisher final rinse/stabilizer/replenisher
color reversal paper	color developer/replenisher final rinse/stabilizer/replenisher

### Chemicals that *do not* become a part of film or paper during processing

Examples include:

- Black and white developer/replenisher
- Activator
- Stop bath
- Reducer
- Cleaners
- Fixers (without hardener)
- First developer/replenisher
- Reversal bath/replenisher
- Color bleaches
- Developer starter
- Prebleach/replenisher
- Bleach fix/replenisher
- Bleach starter

## FOR MORE INFORMATION

For additional information or assistance with how the Sales and Use Tax Law applies to your business operations, please take advantage of the resources listed below.

### CUSTOMER SERVICE CENTER

1-800-400-7115

TTY:711

Customer service representatives are available weekdays from 8:00 a.m. to 5:00 p.m. (Pacific time), except state holidays. In addition to English, assistance is available in other languages.

### FIELD OFFICES

City	Area Code	Number
Bakersfield	1-661	395-2880
Culver City	1-310	342-1000
El Centro	1-760	352-3431
Fairfield	1-707	427-4800
Fresno	1-559	440-5330
Glendale	1-818	543-4900
Irvine	1-949	440-3473
Norwalk	1-562	466-1694
Oakland	1-510	622-4100
Rancho Cucamonga	1-909	257-2900
Rancho Mirage	1-760	770-4828
Redding	1-530	224-4729
Riverside	1-951	680-6400
Sacramento	1-916	227-6700
Salinas	1-831	443-3003
San Diego	1-858	385-4700
San Francisco	1-415	356-6600
San Jose	1-408	277-1231
Santa Clarita	1-661	222-6000
Santa Rosa	1-707	576-2100
Ventura	1-805	677-2700
West Covina	1-626	480-7200

### Out-of-State Field Offices

Chicago, IL	1-312	201-5300
Houston, TX	1-713	739-3900
New York, NY	1-212	697-4680
Sacramento, CA	1-916	227-6600

### INTERNET

[www.boe.ca.gov](http://www.boe.ca.gov)

You can log onto our website for additional information—such as laws, regulations, forms, publications, and policy manuals—that will help you understand how the law applies to your business.

You can also verify seller's permit numbers on the BOE website (look for "[Verify a Permit/License](#)") or call our toll-free automated verification service at 1-888-225-5263.

Multilingual versions of publications are available on our [website](#) at [www.boe.ca.gov](http://www.boe.ca.gov).

Another good resource—especially for starting businesses—is the California Tax Service Center at [www.taxes.ca.gov](http://www.taxes.ca.gov).

### FAXBACK SERVICE

Our faxback service, which allows you to order selected publications, forms, and regulations, is available 24 hours a day. Call 1-800-400-7115 and choose the fax option. We'll fax your selection to you within 24 hours.

### TAX INFORMATION BULLETIN

The quarterly Tax Information Bulletin (TIB) includes articles on the application of law to specific types of transactions, announcements about new and revised publications, and other articles of interest. You can find current and archived TIBs on our website at [www.boe.ca.gov/news/tibcont.htm](http://www.boe.ca.gov/news/tibcont.htm). Sign up for our BOE updates email list and receive notification when the latest issue of the TIB has been posted to our website.

### FREE CLASSES AND SEMINARS

Most of our statewide field offices offer free basic sales and use tax classes with some classes offered in other languages. Check the Sales and Use Tax Section on our website at [www.boe.ca.gov](http://www.boe.ca.gov) for a [listing of classes and locations](#). You can also call your local field office for class information. We also offer [online seminars](#) including the Basic Sales and Use Tax tutorial and how to file your tax return that you can access on our website at any time. Some online seminars are also offered in other languages.

### WRITTEN TAX ADVICE

For your protection, it is best to get tax advice in writing. You may be relieved of tax, penalty, or interest charges that are due on a transaction if we determine that we gave you incorrect written advice regarding the transaction and that you reasonably relied on that advice in failing to pay the proper amount of tax. For this relief to apply, a request for advice must be in writing, identify the taxpayer to whom the advice applies, and fully describe the facts and circumstances of the transaction.

Please visit our website at: [www.boe.ca.gov/info/email.html](http://www.boe.ca.gov/info/email.html) to email your request. You may also send your request in a letter to: Audit and Information Section, MIC:44, State Board of Equalization, P.O. Box 942879, Sacramento, CA 94279-0044.

### TAXPAYERS' RIGHTS ADVOCATE

If you would like to know more about your rights as a taxpayer or if you have not been able to resolve a problem through normal channels (for example, by speaking to a supervisor), please see *Understanding Your Rights as a California Taxpayer*, [publication 70](#), or contact the [Taxpayers' Rights Advocate Office](#) for help at 1-916-324-2798 (or toll-free, 1-888-324-2798). Their fax number is 1-916-323-3319.

If you prefer, you can write to: Taxpayers' Rights Advocate, MIC:70; State Board of Equalization; P.O. Box 942879; Sacramento, CA 94279-0070.

## Regulations, forms, and publications

### *Lists vary by publication*

Selected regulations, forms, and publications that may interest you are listed below. A complete listing of sales and use tax [regulations](#), [forms](#), and [publications](#) appears on our [website](#). Multilingual versions of our publications and other multilingual outreach materials are also available at [www.boe.ca.gov/languages/menu.htm](http://www.boe.ca.gov/languages/menu.htm).

### **Regulations**

- 1507 *Technology Transfer Agreements*
- 1526 *Producing, Fabricating, and Processing Property*
- 1528 *Photographers, Photocopiers, Photo Finishers and X-Ray Laboratories*
- 1529 *Motion Pictures*
- 1540 *Advertising Agencies and Commercial Artists*
- 1541 *Printing and Related Arts*
- 1543 *Publishers*
- 1614 *Sales to the United States and Its Instrumentalities*
- 1620 *Interstate and Foreign Commerce*
- 1628 *Transportation Charges*
- 1632 *C.O.D. Fees*
- 1641 *Credit Sales and Repossessions*
- 1642 *Bad Debts*
- 1668 *Sales for Resale*
- 1685 *Payment of Tax by Purchasers*
- 1698 *Records*
- 1700 *Reimbursement for Sales Tax*
- 1821 *Forward*

### **Publications**

- 17 *Appeals Procedures: Sales and Use Taxes and Special Taxes*
- 44 *District Taxes*
- 46 *Leasing Tangible Personal Property*
- 51 *Resource Guide to Free Tax Products and Services for Small Businesses*
- 58A *How to Inspect and Correct Your Records*
- 61 *Sales and Use Taxes: Exemptions and Exclusions*
- 70 *Understanding Your Rights as a California Taxpayer*
- 73 *Your California Seller's Permit*
- 74 *Closing Out Your Seller's Permit*
- 75 *Interest, Penalties and Fees*
- 76 *Audits*
- 100 *Shipping and Delivery Charges*
- 101 *Sales Delivered Outside California*
- 102 *Sales to the United States Government*
- 103 *Sales for Resale*
- 105 *District Taxes and Delivered Sales*
- 108 *Labor Charges*
- 109 *Internet Sales*
- 110 *California Use Tax Basics*
- 116 *Sales and Use Tax Records*
- 126 *Mandatory Use Tax Registration for Service Enterprises*

Publicaciones disponibles en su idioma

以您的母語出版的出版物

Các Ấn Phẩm Có Sẵn Trong Ngôn Ngữ Của Quý Vị

귀하의 언어로 된 간행물이 있습니다

