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August 27, 1993

BURTON W. OLIVER
Executive Director

Mr. C--- L. N---, CPA
XXXX --- --- ---, XXth Floor
--- ---, CA XXXXX

Dear Mr. N---:

Re: A--- C---, Inc.
SY -- XX-XXXXXX

This is in reply to your July 22, 1993 letter regarding the application of sales tax to your client's charges for negative retouching.

As you noted, we responded to a request for an opinion from the --- audit staff in 1985. We concluded that tax does not apply to A--- C---'s sales of retouching to out-of-state photographers when A--- C--- retouches the negative and does not use the negative to make prints prior to shipping the negatives out of state. In accordance with Revenue and Taxation Code Section 6396 we also concluded that, when A--- C--- does use the negatives to make prints in California prior to shipping the negatives out of state, sales tax applies to A--- C---'s sale of the retouching.

You asked whether our conclusion that sales tax applies to A--- C---'s sale is based on the assumption that A--- [C---] and its customer entered into an explicit agreement passing title to its customer prior to use. Of course, our opinion was based on A--- C---'s charges being for retouching new photographs which would constitute taxable fabrication labor.

We do not believe that, under the described facts, a title clause is necessary in order for a taxable sale to occur in California. The negatives which A--- [C---] retouches already belong to the purchaser. The sale of the retouching occurs in this state. If A--- [C---] were to merely ship the retouched negatives to the out of state location prior to making any use of them in this state

Mr. C--- L. N---, CPA

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on behalf of the purchaser, A--- [C---]'s sale would be exempt from sales tax pursuant to Revenue and Taxation Code section 6396. However, when A--- [C---] uses the customer's retouched negatives in this state to make prints, A--- [C---]'s sale of the retouching is a retail sale in this state and subject to sales tax.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:plh