

INFORMATION BULLETIN #34

SALES TAX

NOVEMBER 2011

(Replaces Bulletin #34 dated April 1983)

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information, which is not consistent with the law, regulations, or court decisions, is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: SALES TAX APPLICATION TO PHOTOGRAPHY AND VIDEO SERVICES

REFERENCES: IC 6-2.5-1-1; IC 6-2.5-1-16.2, IC 6-2.5-1-16.3, IC 6-2.5-1-16.4; IC 6-2.5-1-26.5; IC 6-2.5-1-28.5; IC 6-2.5-1-2; IC 6-2.5-2-1; IC 6-2.5-2-2; IC 6-2.5-4-1; IC 6-2.5-5-3; IC 6-2.5-5-8; IC 6-2.5-5-16; IC 6-2.5-5-24; IC 6-2.5-5-25; 45 IAC 2.2-4-2; *Streamlined Sales and Use Tax Agreement* (Sept. 20, 2009)

OVERVIEW

In general, photography, videos, and related services are not retail transactions subject to sales or use tax in Indiana. However, when a product is transferred as a part of photography or video services, the property, including any labor charges necessary to create the product, may be subject to sales tax depending on the nature of the transaction and the value attributed to both the service and the property transferred.

I. Definitions

A **“photograph”** is a still image that is printed or captured on some form of physical medium including, but not limited to, film, paper, slides, negatives, computer hard drive, CD, DVD, removable disk, or flash memory device.

“Photography” refers to the act of creating a photograph.

A **“video”** is the recording of a sequence of related still images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, and that are

captured on some form of physical medium including, but not limited to, film, computer hard drive, DVD, removable disk, or flash memory device.

“Video service” refers to the act of creating a video.

“Specified digital products” means electronically transferred digital audio works, digital audiovisual works, or digital books.

“Digital audio works” means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones.

“Digital audiovisual works” means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

“Transferred electronically” means obtained by a purchaser by means other than tangible storage media.

“Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. The term includes electricity, water, gas, steam, and prewritten computer software.

II. Application of Sales Tax to Sales of Photographs, Videos, and Related Products

In general, sales tax is imposed on all retail transactions made in Indiana. A retail transaction occurs when a person engages in selling at retail. A person engages in selling at retail when, in the ordinary course of his regularly conducted trade or business, he acquires tangible personal property for the purpose of resale and transfers that property to another person for consideration. When a product is transferred as part of photography or video services, the product, including any labor charges necessary to create it, may be subject to sales tax depending on the nature of the transaction and the value attributed to both the service and the property transferred.

A. Nontaxable Sales

Photography and Video Services

The Department’s regulation found at 45 IAC 2.2-4-2(a) provides that “[w]here, in conjunction with rendering professional services, personal services, or other services, the [serviceperson] also transfers tangible personal property for a consideration, this will constitute a transaction of a retail merchant constituting selling at retail unless:

- (1) The [serviceperson] is in an occupation which primarily furnishes and sells services, as distinguished from tangible personal property;
- (2) The tangible personal property purchased is used or consumed as a necessary incident to the service;
- (3) The price charged for tangible personal property is inconsequential (not to exceed 10%) compared with the service charge; and

(4) The [serviceperson] pays gross retail tax or use tax upon the tangible personal property at the time of acquisition.”

In the context of photography or video services, such as those associated with a birthday, graduation, or wedding event, if the charge for the photographs or videos (or other tangible personal property) does not exceed 10% of the total service or labor charges, there is no retail transaction and, accordingly, sales tax does not apply to the transaction.

Example: Photographer charges Customer \$1,000 to photograph and film Customer’s wedding. The invoice indicates that Photographer’s total charge is comprised of \$900 for the work of photographing and filming the wedding and \$100 for the photographs and video transferred to Customer. The transaction is not subject to sales tax, provided that Photographer pays sales or use tax on the tangible personal property that is transferred.

Products Transferred Electronically

In pertinent part, sales and use tax is imposed on products transferred electronically only if the products meet the definition of specified digital products. Products transferred electronically mean products that are obtained by a purchaser by means other than tangible storage media. Specified digital products currently include only digital audio works (e.g., songs, spoken-word recordings, or ringtones), digital audiovisual works (e.g., movies), and digital books.

In the context of photography or video services, because photos are not included in the definition of specified digital products, charges for photos transferred to a customer electronically (e.g., via the Internet or e-mail) are not subject to sales or use tax. NOTE: Because videos are included in the definition of specified digital products, charges for videos are subject to sales tax even when transferred electronically.

Example: Photographer digitizes Customer’s photographs and places them on a flash drive. Charges for the photographs are subject to sales tax because the photographs are in tangible form.

Example: Photographer digitizes Customer’s photographs and sends them to Customer via e-mail. Charges for the photographs are not subject to sales tax because the photographs are transferred electronically but do not represent taxable specified digital products.

Example: Photographer digitizes Customer’s videos and sends them to Customer via e-mail. Charges for the videos are subject to sales tax because the videos represent taxable specified digital products.

For more information related to the application of sales and use tax to products transferred electronically, please refer to Commissioner’s Directive #41, available online at <http://www.in.gov/dor/3617.htm>

Other Exempt Transactions

Some transactions ordinarily subject to sales and use tax are exempt based on the nature of the transaction or the identity of the purchaser. For instance, purchases for resale are exempt in Indiana. Additionally, an exemption is available from sales and use tax for certain purchases made by federal, state, and local government entities, as well as nonprofit entities. To claim an available exemption, the exempt entity must present the retail merchant with a Form ST-105, available online at <http://www.in.gov/dor/3504.htm>

B. Taxable Sales of Tangible Personal Property

Despite operating as a service provider for some transactions, photographers also can engage in retail transactions. For instance, if charges for tangible personal property transferred to a customer exceed 10% of the total service or labor charge for a transaction, then the transaction is a retail transaction and any tangible personal property transferred is subject to sales tax. NOTE: If charges for nontaxable services are not segregated from charges for taxable tangible personal property, the entire invoiced amount is subject to sales tax.

Example: Photographer charges Customer \$1,000 to photograph and film Customer's wedding. The invoice indicates that Photographer's total charge is comprised of \$850 for the work of photographing and filming the wedding and \$150 for a wedding album, photographs, and video transferred to Customer. The charge for the wedding album, photographs, and video transferred to Customer (\$150) is subject to sales tax.

Additionally, when tangible personal property is sold as the true object of a transaction and not merely consumed as a necessary incident to a service, the transaction is subject to sales tax. Included in the amount subject to sales tax are charges for fabrication, which include labor to create or produce a new product, such as photographs, prints, slides, or proofs. Common examples of fabrication labor subject to sales tax include, but are not limited to, the following:

- Mounting photographs or slides
- Matting and framing services
- Matte or luster spraying photos
- Making enlargement from prints, slides, or negatives
- Printing on customer-furnished paper
- Coloring or tinting new photos
- Retouching negatives
- Cropping photographs
- Creating slides or prints from digital images
- Digitizing images and placing them on digital storage media, such as CDs, diskettes, flash memory devices, or DVDs
- Scanning prints or slides and saving them on digital storage media
- Making prints or slides from digital images provided by customers

- Converting a customer's film or videotape to CD or DVD
- Editing (including cropping, retouching, other otherwise modifying) a digital image as part of transferring the image to a storage medium
- Renting a camera, computer, or other equipment
- Renting or constructing props
- Studio overhead
- Shipping and delivery charges

III. Purchases of a Merchant Engaged in Photography and Video Services

To the extent that a retail merchant directly uses machinery, tools, and equipment to produce, manufacture, fabricate, assemble, process, or finish other tangible personal property, transactions involving the purchase of such items are exempt from sales tax. In the context of photography or video services, the exemption does not apply to purchases of items used as part of a nontaxable service. If an item is used in both a taxable and nontaxable manner, sales tax will apply to the purchase of the item in the same proportion that the item is used in a nontaxable manner.

Example: Photographer purchases a camera for \$500 used exclusively to photograph weddings. Photographer does not charge sales tax on his photos of weddings because charges for the tangible personal property, i.e., the photographs, transferred to his customers never exceed 10% of the total service or labor charges. Photographer must pay sales tax on the full amount of the camera when purchased.

Example: Photographer purchases a computer for \$1,000 and uses it 50% of the time to process wedding photographs as part of his wedding service package and 50% of the time to digitize its customer's images and place them on CDs. Photographer does not charge sales tax on his photos of weddings because charges for the tangible personal property, i.e., the photographs, transferred to his customers never exceed 10% of the total service or labor charges. Photographer must pay sales tax on the full amount of the computer when purchased but may file a subsequent claim for refund with the Department for 50% of the total amount paid for the computer..

For more information related to sales or purchases made by merchants engaged in photography or video services, please contact the Department of Revenue, Tax Policy Division, at (317) 232-7282.

A handwritten signature in black ink that reads "John Eckart". The signature is fluid and cursive, with a large loop at the end of the last name.

John Eckart
Commissioner