



Sales Tax Guidelines for Photography

Originally issued March 3, 2005/Revised August 1, 2014
Wyoming Department of Revenue

Taxability Determinations

Over the last several years the photography industry has undergone a renaissance in how the services are bought and sold. In many cases the location where a customer is photographed is no longer in the same jurisdiction where the customer receives their prints. In addition many times the customer no longer receives print sheets but rather receives access to their documents in an electronic media source. The advent of digital photography, in our view, represents merely another method of producing photographs for retail sale. Whether photographs are produced conventionally or digitally the end result is the same. Both produce tangible personal property for retail sale. That sale is subject to sales tax.

In addition, it matters not that such a sale could occur via the Internet. A photographer who has a legal physical presence in Wyoming must license with our office to collect and remit Wyoming sales tax on retail sales of photographs in Wyoming.

- The sales price paid for photographs, photo equipment and supplies, photography and photo developing, and printing are subject to the sales tax. The photography process creates a photograph. A photograph is tangible personal property. Wyoming law imposes sales tax on the retail sales

price paid for tangible personal property in Wyoming.

- A photographer's materials, labor and service charges are all part of the sales price of the photographs produced for retail sale.
- Other than the photograph media itself, there are many other aspects of photography that are similarly included in the eventual retail sales price. Sitting fees are the initial step in the process of photography. Such fees are part and parcel of the end product (e.g. photographs). A photographer's use of photo equipment is a necessary service component to create photographs for retail sale. Processing of film and photo developing is merely another step to the end of producing photographs for retail sale. All of these steps are part of the taxable retail sales price of photographs.

Sourcing the Tax on Photography

In order to determine the appropriate rate of tax for photography services we look to the various locations where the services can be rendered. For example, as noted previously, a sitting or event charge is the first step of the taxable service and often occurs at a different location from where the customer receives the final product, prints or digital media. In addition some photographers provide their customers with an itemized

invoice for the sitting/event charge separate from the price of the photographs they create while others charge a lump sum for the entire package, sitting/event, prints, DVDs, albums, etc. When the sitting/event fees are separated from the cost of the final print or video, sales tax is assessed on each portion based upon its own taxing location. But for those invoices that are not itemized, tax is assessed based on the location where the first taxable event occurs.

To illustrate, let us use an example that a customer contracts with a photographer to shoot a wedding at a location in Casper, Natrona County, Wyoming and also that the customer lives in Cheyenne, Laramie County, Wyoming. Considering that the photographer in the example will charge a certain price for the photography fee and a separate per sheet price on prints shipped to the customer's residence, the photographer will charge sales tax on his sitting/event fee based on the rate in effect in Natrona County but will charge sales tax on the prints based on Laramie County. If the sitting was performed outside of the state of Wyoming, say in Nebraska, Wyoming tax would not be due on the sitting, only on the prints. Similarly, if the sitting was performed in Casper but the prints were mailed to a customer out of state, Wyoming would impose sales tax on the sitting fee, not the sale of prints.

In contrast, if the photographer were to offer a 'lump sum' package price to his customer for his photography service and prints, the entire invoice would be taxable based on the location where the first taxable event occurred in Wyoming, which in our initial example would be Natrona County. [W.S. 39-15-104(f)(i)] Extending this to an un-itemized invoice with a sitting location in Nebraska and print delivery in Cheyenne, the entire invoice would be subject to

Wyoming sales tax based on the Laramie County rate. In an itemized invoice only the print charges would have been taxable because the out of state sitting fee is not separately stated and distinguishable from taxable charges in a packaged invoice, it becomes taxable by default. [WY Dept of Rev Rules, Chap 2, Sec 7(a)] It is not sufficient that the charges may be broken down internally by the photographer; they must be visible on the invoice, bill or sale or similar document exchanged between the photographer and his customer and also available to an auditor in the event of an audit.

Considering this further if the photographer in question was to provide the client access to his website in order to purchase individual prints, the sale of reprints and/or prints is taxable. Tax on the sitting/event fee would be charged based on the location where the photography service was rendered and tax on the prints would be charged based on the location where the client received the prints. Similarly if the photographer was to allow the client to download a certain number of digital images from his website to the client's personal storage device or allow the client to purchase a CD/DVD loaded with image files, the client again is receiving tangible personal property for which Wyoming imposes sales tax. The primary difference in an electronic transfer is it may be more difficult to determine where the client actually receives their purchase.

Our sourcing rules dictate that tax is based on the location where a customer receives or takes receipt of tangible personal property purchased. In the traditional cases we have discussed thus far that is usually the seller's business location or the delivery location as it appears on packing slips, delivery slips or bills of lading, etc. In an electronic sense

these documents do not readily exist. As a result our sourcing rules provide for the following scenarios. If a delivery (traditional or electronic) is made and the seller is aware where the delivery will be received it is appropriate to use that jurisdiction for taxing purposes. However if the seller is unaware of the delivery location, he must use an address for the purchaser obtained during the sale. This is often noted as the mailing or billing address in a web contact form, on a client purchase order or even part of the contract for services, etc. If the purchaser does not indicate a mailing or billing address in the culmination of the sale but the seller is made known an address for the purchaser from his payment instruments, such as his credit card billing address or address appearing on his check form, he must use that location for taxing purposes. Finally if the photographer does not have an address for the purchaser by any previous method he would charge sales tax based on the location from where the media was transferred, i.e. his own location.

So to use our original example with the photographer providing his service in Casper but allowing a customer to download images, the photographer would tax the sitting/event fee based on Natrona County but would tax the image transfer based on the location where the customer will receive them. Since in most cases the photographer cannot be certain of the physical location of transfer but does have a billing or mailing address for his client in the contract, it is more common that he would use that address to assign sales tax for the image portion. Furthering this line of thought when friends and family purchase prints, sales tax would be charged on their purchases based on the delivery location or based on the information provided by the purchaser during the sale as outlined above. Finally if the customer does not provide any delivery,

personal, business or payment address the photographer would use his location where transmission of the prints first occurred to assign the sales tax.

Another consideration is when a photographer provides the images with an Artists Release of Photography Copyright. The copyright release is an intangible and represents a transfer of intellectual property. Wyoming does not impose sales tax on the transfer of ownership of intangibles. But this can pose a problem when it is comingled with the sale of the images that is the subject of the release. In order for a photographer to avoid charging sales tax on the non-taxable copyright transfer he must separate these charges from the taxable sale of the images. For example, if the photographer separately charges \$50 for the images or CD/DVD and \$250 for the artist's release then only the \$50 images are subject to Wyoming sales tax. However if the photographer charges \$300 for images with the artist's release included, the full \$300 is subject to Wyoming sales tax.

Photographer's Purchases

Above it was discussed how sales tax applies to sales made by the photographer. Now we will turn our attention to purchases made by the photographer in order to perform his photography service. As a licensed vendor there are some items that can be purchased on a wholesale for resale basis. Materials and supplies used by the photographer such as paper and chemicals consumed in the process of producing photographs intended for resale shall be exempt from the sales tax. [WY Dept of Rev Rules, Chap 2, Sec. 13(y)] These items and associated services are proper resale items as they are integral to creating photographs which are subsequently sold and taxed in a retail sale. But, those items which do not

become part of the photographs but are business purchases used to conduct the photography business are taxable to the photographer at the time of purchase. These include but are not limited to, props, cameras, lenses, filters, lights, computer hardware and software.

Please note that the Excise Tax Division publishes a quarterly newsletter titled "Taxing Issues." This publication is mailed to all licensed vendors and contains items of general interest such as common taxability issues, forthcoming tax rate changes, and legislative changes. Current and past issues of this publication are available on our website, <http://revenue.wyo.gov>.

Please be advised that this bulletin addresses issues in general terms and cannot be appropriate or applicable in all situations. If your situation is markedly different or you have concerns about this issue, please do not hesitate to contact this department. You can do so by e-mail directed to:
DOR_taxability@wyo.gov

Supporting Authority -

W.S. 39-15-101(a)(viii) states:

"Sales price":

(A) Shall apply to the measure subject to sales tax and means the total amount or consideration, including cash, credit, property and services for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (I) The seller's cost of property sold;
- (II) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller and any other expense of the seller;

(III) Charges by the seller for any services necessary to complete the sale other than delivery and installation charges;

(IV) Delivery charges;

(V) Installation charges;

(VI) Repealed by Laws 2007, Ch. 10, 2.

(B) Shall not include:

(I) Discounts, including cash, terms or coupons which are not reimbursed by a third party, which are allowed by a seller and taken by a purchaser on a sale;

(II) Interest, financing and carrying charges from credit extended on the sale of personal property or services, if the amount is separate stated on the invoice, bill of sale or similar document given to the purchaser; and

(III) Any tax legally imposed directly on the consumer which is separately stated on the invoice, bill of sale or similar document given to the purchaser.

(C) "Sales price" shall include consideration received by the seller from third parties if:

(I) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to the price reduction or discount on the sale;

(II) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(III) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and (IV) One (1) of the following criteria is met:

(1) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or

discount where the coupon certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(2) The purchaser identifies himself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron shall not constitute membership in such a group; or

(3) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

W.S. 39-15-103(a)(i)(A) states:

Taxable event. The following shall apply:

Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

(A) The sales price of every retail sale of tangible personal property within the state;

W.S. 39-15-103(a)(i)(B) states:

Taxable event. The following shall apply:

Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

(B) The gross rental paid for the lease or contract transferring possession of tangible personal property if the transfer of possession would be taxable if a sale occurred;

W.S. 39-15-104(f)(i) states:

The tax rate imposed upon a transaction subject to this chapter shall be sourced as follows:

The retail sale, excluding lease or rental, of a product shall be sourced as follows:

(A) When the product is received by the purchaser at a business location of the seller, the sale shall be sourced to that business location;

(B) When the product is not received by the purchaser at a business location of the seller's, the sale shall be sourced to the location where receipt by the purchaser, or the purchaser's agent designated as such by the purchaser, occurs, including the location indicated by instruction for delivery to the purchaser or donee, known to the seller;

(C) When subparagraphs (A) and (B) of this paragraph do not apply, the sale shall be sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(D) When subparagraphs (A) through (C) of this paragraph do not apply, the sale shall be sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith;

(E) When none of the previous rules of subparagraphs (A) through (D) of this paragraph apply, including the circumstance in which the seller is without sufficient information to apply any of the previous rules, then the location shall be determined by the address from which tangible personal

property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold;

(F) For the purposes of this paragraph the terms "receive" and "receipt" mean taking possession of tangible personal property, making first use of services or taking possession or making first use of digital goods, whichever comes first. The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

conducting their businesses or professions shall be subject to the sales or use tax.

WY Dept. of Rev Rules, Chap 2, Sec 7(a)

states:

General. Non-taxable transactions, including sales made for resale, shall be shown separately from taxable charges on sales invoices. The entire invoice amount shall be subject to the sales/use tax if the nontaxable or exempt charges are not separately shown and distinguishable from taxable charges.

WY Dept. of Rev Rules, Chap 2, Sec 13(y)

states:

Photography, Photo Developing and Enlarging. The sales price paid for photographs, photo equipment and supplies, photography and photo developing, and printing shall be subject to the sales tax. Materials and supplies such as paper and chemicals consumed in the process of producing photographs intended for resale shall be exempt from the sales tax.

WY Dept. of Rev Rules, Chap 2, Sec 13(bb)

states:

Purchases by Businesses. Purchases by businesses and professional persons of equipment, tools and supplies for use in