

810-6-1-.119 Photographs, Photostats, Blueprints, etc.

(1) The gross proceeds accruing from retail sales of photographs, blueprints and other similar articles are subject to sales or use tax, without any deduction for any part of the cost of production, whether delivered in final printed form or delivered in digital form via telephone lines, over the Internet, by e-mail, or by another alternative form of transmission. The transfer of digital images of these items from a seller to a purchaser for a price constitutes the sale of tangible personal property. The form in which tangible property is delivered by the seller to the purchaser is of no consequence. (Sections 40-23-2(1) and 40-23-61(a)) (Robert Smith FlipFlopFoto v. State of Alabama (Admin. Law Div. Docket No. S. 05-1240, Final Order entered April 30, 2007))

(a) In cases where negatives belonging to the customer are developed, the charge for developing the negatives is not subject to sales or use tax if a separate charge is made to the customer.

(b) In cases where an airplane is chartered for use in making aerial photographs, the charge for use of the airplane is not subject to sales or use tax if a separate charge is made to the customer.

(c) In cases where individuals deliver pictures to photographers or photographic studios for tinting or coloring, the receipts from such tinting or coloring are not subject to tax, since such receipts result from services rendered and do not result from sales of tangible personal property. (Section 40-23-2(1))

(2) Any fee for sitting, consultation or any other activity that is done in preparation of the final product, even when separately stated, is a part of the labor or service cost and cannot be deducted from the gross proceeds accruing from retail sales. Therefore, gross proceeds, as referenced in paragraph (1) include, but are not limited to consultation fees, sitting fees, and all other fees when such fees are charged in conjunction with the sale of photographs, blueprints, and other items sold by the retailer as provided in paragraph (1). Any reasonable and customary retainer fee separately stated on the photographer's contract that is both nonrefundable and may not be credited toward any purchase of photographs is not taxable. The separate fee is unrelated to the production of the finished photographs.

(a) Example 1. Photographer charges \$3,500 for a contract to provide a photographic session. This amount is billed either as a lump sum or broken down on the invoice showing \$3,000 due for consulting, sitting or other fees and \$500 for a disc or access to digital photos. Regardless of whether the pictures are purchased on a disk or accessed digitally, the full amount of \$3,500 is subject to sales or use tax.

(b) Example 2. Photographer charges \$3,500 for a contract to provide a photographic session. The amount is provided as a lump sum or it is broken down on the invoice showing \$3,000 due for consulting, sitting, or other fees and \$500 for a disc or access to digital photos. The contracting party decides to cancel the photo session and not purchase any photos. There are no sales or use taxes due because there is no sale of tangible personal property.

(c) Example 3. Photographer charges \$3,500 for a contract for a photographic session. This amount is billed either as a lump sum or broken down on the invoice showing \$3,000 due for consulting, sitting, or other fees and \$500 for a disc or access to digital photos. After the session, the photographer edits the photographs and then mails the disc, album, and/or the printed photographs ordered by the customer to the in-state or out-of-state address provided by the customer. The customer and others can also later order additional photographs from the photographer's online gallery. The photographer also mails those additional photographs to the in-state or out-of-state address provided by the customer.

1. Prepaid fees constitute a part of taxable gross proceeds because they are for the photographer's labor in planning, shooting, and editing the photographs, which are required and necessary steps in producing the finished, tangible products being sold by the photographer.

2. The prepaid contract amount is taxable only if the photographer subsequently sells a disc, album, and/or printed photographs to a customer in Alabama. That is, if a customer cancels before the scheduled session date, any prepaid fees collected by the photographer would not be subject to sales tax because no sale of tangible personal property occurred.

3. The above does not apply, however, to any reasonable and customary retainer fee separately stated on the photographer's contract that is both nonrefundable and may not be credited toward any purchase of photographs. The separate fee is unrelated to the production of the finished photographs.

(d) Example 4. Photographer books a client one year prior to his/her scheduled photo session. The contract is broken down showing \$3000 for consulting, sitting or other fees, \$250 for a disc of images, and a \$250 print credit. After the session, the client instructs the photographer to mail the disc of images to a location outside of Alabama and to send \$250 worth of prints to a location in Alabama.

1. The \$250 disc mailed out of state would constitute a nontaxable sale closed outside of Alabama provided it is separately stated on the invoice and the photographer has proof that the disc was placed in interstate commerce. The \$250 worth of prints mailed to a location in Alabama would be taxable in Alabama.

2. The \$3000 for consulting, sitting or other fees are fully taxable and are considered the photographer's labor in producing the finished photographs. If the consulting, sitting or other fees include a separately stated reasonable and customary retainer fee as described in Example 3, the reasonable and customary retainer fee would not be taxable. The photographer's labor was necessary to produce the items sold in Alabama. Therefore, the entire labor fees would be taxable, even if the photographer also sold additional photographs, in whatever form, outside of Alabama.

3. In summary, except for any separately stated reasonable and customary retainer fee, the photographer's prepaid fee for taking, editing, and otherwise preparing the discs, albums, or printed photographs for sale is for the photographer's labor associated with those activities, and is a part of taxable gross proceeds. Consequently, in the above example, while the \$250 disc delivered outside of Alabama would be nontaxable, the photographer would owe Alabama sales tax on the \$3,250 balance, less the amount designated as a reasonable and customary retainer, if applicable. If the photographer subsequently sells additional discs, albums, or photographs that were not included in the contract, the proceeds from those sales would be taxable if delivered in Alabama and nontaxable if delivered outside of Alabama. (Jaclyn L. Robinson v. State of Alabama (Admin. Law Div. Docket No. S. 13-807, Opinion and Preliminary Order entered September 8, 2014, Final Order entered October 8, 2014))

(3) The materials which become a physical part of the photographic prints, photostats, blueprints, etc., are purchased tax free at wholesale by the seller of the photographic print, photostat, blueprint, etc. (Sections 40-23-1(a)(9)b and 40-23-60-4)b

(4) The materials and chemicals used or consumed by the seller of photographic prints, blueprints, etc., but not becoming a component thereof, are purchased at retail by the seller and are subject to the sales or use tax, whichever may apply at the time of such purchase. (Sections 40-23-1(a)(10) and 40-23-60-(5))

(5) The mechanical equipment used in the production of photographic negatives, photographic prints, photostats, and blueprints including cameras are taxed at the reduced machine rate of sales or use tax. (Sections 40-23-2(3) and 40-23-61-(b))

(6) Photographic prints, blueprints, or other images sold to an advertising agency for use in the performance of a contract are purchased at retail by the advertising agency and are subject to the sales or use tax, whichever may apply at the time of such purchase. (See Rule 810-6-1-.02, entitled Advertising Agencies.)

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Authority: Sections 40-2A-7(a)(5), 40-23-31, 40-23-83, 40-23-1(a)(10), 40-23-2(1), 40-23-2(3), 40-23-61(a), 40-23-1(a)(9)b, 40-23-2(3), 40-23-60(4)b, 40-23-60(5), 40-23-61(a), 40-23-61(b), Code of Alabama 1975

History: Amended November 3, 1980.
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**BUSINESS ECONOMIC IMPACT STATEMENT
(Section 41-22-5.1)**

Control No. 810 Department or Agency REVENUE

Rule No: **810-6-1-.119**

Rule Title: **Photographs, Photostats, Blueprints, etc.**

New Amend Repeal Adopt by Reference

1. An estimate of the number of businesses affected by the rule:
No additional businesses will be subject to this rule change as it was for clarification purposes only and not a new tax.

2. Projected reporting required for compliance:
Reporting and remitting sales tax returns and payments for of photographs, blueprints and other similar articles.

3. Projected recordkeeping required for compliance:
Filing returns, remitting payments

4. Projected administrative costs required for compliance:
None

5. Is the proposed rule a result of a requirement issued by a federal agency?
 Yes or No