

Nebraska Sales and Use Tax for Photographers and Photofinishers

Overview

Every person engaged in the business of selling photographs, proofs, **digital audio-visual works**, or other property to customers in Nebraska is a retailer. Photographers and photofinishers must obtain a Nebraska Sales Tax Permit for each place of business within the state by completing a [Nebraska Tax Application, Form 20](#). Sales tax must be collected and remitted on all sales, including charges for film developing, unless the customer provides a properly completed [Nebraska Resale or Exempt Sale Certificate, Form 13](#).

This guidance document is advisory in nature but is binding on the Nebraska Department of Revenue (Department) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of the Department and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.



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Terms

Digital Audio-Visual Works. Products consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any. This would include recordings of live events, such as weddings.

Manufacturing. Manufacturing is an action or series of actions performed upon tangible personal property, either by hand or machine, which results in that tangible personal property being reduced or transformed into a different state, quality, form, property, or thing.

Photofinishing. Photofinishing is the act or business of developing and printing films or other photographic media.

Photography. Photography is the practice or occupation of taking and having photographs printed. Kinds of photography include:

- ❖ Aerial;
- ❖ Amateur;
- ❖ Portrait;
- ❖ Professional; and
- ❖ Videography.

Retail Sale. A retail sale is a sale of tangible personal property (for example, a photograph) and digital audio-visual works (for example, a video) for a consideration (for example, a payment).

Sales

Taxable Sales of Tangible Personal Property and Digital Audio-Visual Works

Photographers' and photofinishers' sales are taxable when the image is delivered by tangible means. Taxable sales include sales of, or charges for:

- ❖ Videotapes, CDs, and DVDs;
- ❖ Cameras, accessories, and film;
- ❖ Developing film and/or digital images;
- ❖ Filming and videotaping;
- ❖ Framing;
- ❖ Media conversions;
- ❖ Photographs, slides, or prints;
- ❖ Repairing photographic equipment;
- ❖ Reproducing photographs, documents, drawings, or blueprints; and
- ❖ Restoring, tinting, retouching, enlarging, or coloring of photographs.

Taxable Sales of Digital Property include the electronic delivery of:

- ❖ Digital audio-visual works.

Sales tax is collected on the total charge to the customer, regardless of how the charges are stated on the invoice. The state and local sales tax applies to sales of photography sold on a tangible medium based on where the customer takes possession of the product. Sales of digital audio-visual works are subject to sales tax at the rate imposed at the purchaser's address.

Costs or expenses become part of the final price of the photograph or video and are taxable, even when separately stated, on the customer's invoice. Examples of these costs or expenses are:

- ❖ Delivery charges;
- ❖ Equipment rental;
- ❖ Films, DVDs, CDs;
- ❖ Film processing/development charges;
- ❖ Models;
- ❖ Photographic chemicals consumed in the creation of photographic products which do not become a physical part of the finished film or print (see section on Photographic Chemicals below);
- ❖ Proofs of a temporary nature;
- ❖ Prop fees;
- ❖ Travel expenses; and
- ❖ Wardrobe.

Example 1: A company needs photographs of products to display at a meeting. The photographer is hired, takes pictures of the products, and sends several proofs to the company for selection and approval. The proofs are sent electronically. The company selects which proofs they would like to have developed. The photographs are finished and delivered to the company in Nebraska. In this example, the entire selling price of the final photographs is taxable, including all charges for proofs, even if the proofs are sent electronically.

Example 2: A couple wishes to have professional photographs taken of their children. The photographer takes the photographs and sends them, electronically, to a photo processing lab. The lab prepares the finished photographs, delivers them to the couple, and bills the photographer. The photographer bills the couple for taking the photographs and for the finished prints. The entire amount charged by the photographer for taking the photographs and providing the finished prints is subject to sales tax.

Sitting fees. Whether in the studio or on location, sitting fees are taxable if the customer buys the photographs. If the customer rejects the photographs, the sitting fee is not taxable, because there is no taxable sale of photographs.

Photo Booths. Receipts from photo booths are taxable sales.

The total receipts from coin-operated photo booths are taxable like all other coin-operated vending machines.

The total charges for the use of a photo booth, with or without an operator, are taxable. Any additional charges for the operator to load or unload film, or for the creation of memory books or scrapbooks, are also taxable.

Tax Exempt Sales

Delivery Outside of Nebraska. Tangible personal property and digital audio-visual works sent or delivered to a customer outside of Nebraska are exempt from sales tax. Sales of digital audio-visual works are exempt from Nebraska sales tax when the purchaser's address is outside Nebraska. An exemption certificate is not necessary. The photographer's records must clearly indicate what was delivered outside of Nebraska. Be aware that tax may be due in the state of destination.

Sales by Electronic Delivery. With the exception of digital audio-visual works, when the final product is transferred electronically to the client, **with no physical transfer** of prints, negatives, CDs, discs, flash memory cards, or other tangible items, the entire charge for the photography is exempt from sales tax. The photographer's records must clearly indicate which photography was transferred electronically. No exemption certificate is necessary.

A video is taxable whether it is electronically delivered or delivered by traditional means (for example, on a video tape cassette) because when sent electronically, it is a digital audio-visual work.

Sales to Exempt Organizations. Sales to exempt organizations listed in [Regulation 1-012 Exemptions](#), are sales tax exempt if the photographer receives a properly completed Form 13, Section B, from the exempt organization. This shows proof why no sales tax was collected and remitted.

Sales for Resale. Inventory may be sold sales tax exempt for resale purposes with the receipt of a properly completed [Nebraska Resale and Exempt Sale Certificate, Form 13](#), Section A.

Example 2: A photofinisher may sell finished photographs sales tax exempt to a photographer, who will resell the photographs to a customer and collect sales tax.

Purchases

Taxable Purchases

Photographers and photofinishers are the consumers of all equipment, supplies, and certain services used in their normal course of business and must pay sales or consumer's use tax at the time of purchase. Regardless of where a photographer or photofinisher purchases these items, if the vendor does not collect the state and local option sales tax, the photographer or photofinisher is responsible for paying state and local consumer's use tax on the cost of the taxable items.

Purchases of supplies and equipment such as the following, are taxable even when purchased outside of Nebraska at trade shows, conventions, or through an Internet seller. If tax has been paid to another state for these purchases, see [Regulation 1-071 Credit For Tax Paid To Another State](#).

- ❖ Building cleaning, pest control, or security services;
- ❖ Business equipment (e.g., desks, chairs, computers, computer software);
- ❖ Cameras used by the photographer;

- ❖ Darkroom equipment (e.g., enlargers, paper processors);
- ❖ Easels;
- ❖ Film development, proofs, and prints for the photographer's personal use or for promotional purposes;
- ❖ Lenses;
- ❖ Lighting equipment (e.g., backlights, booms, bulbs, and batteries);
- ❖ Other consumable supplies (e.g., paper towels, cleaners, compressed air, printed forms, pamphlets, masking tape);
- ❖ Props and other background equipment;
- ❖ Trays; or
- ❖ Utilities.

Example 3: A photographer orders extra copies of a couple's wedding pictures to use for display and promotional purposes. The photographer owes sales or consumer's use tax on the extra copies used.

Example 4: A photographer sells artistic photographs in a photo shop. The photographer sends film or a digital image, such as a jpeg file to be processed and receives proofs in return. The photographer uses these proofs to decide which prints will be ordered and sold in the shop. The photographer owes sales or consumer's use tax on the proofs and processing services because, in this instance, the photographer is the consumer of the proofs. The prints ordered to sell in the shop are exempt from sales tax, because they are for resale.

❖ **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. These chemicals cannot be purchased sales tax exempt (for resale) unless the intent is to sell them unused to the customer. Examples include:

- Activators;
- Black and white developer/replenishers;
- Cleaners;
- Developer starters;
- First developer/replenishers;
- Fixers (without hardener);
- Reducers; and
- Stop baths.

Tax Exempt Purchases

Resale. Photographic products may be purchased tax exempt by the photographer or photofinisher when they are intended to be sold directly to customers. Examples include:

- ❖ Cameras and accessories for sale to customers;
- ❖ Color transparencies that are permanently transferred to a customer;
- ❖ Film sold to customers for their own use; and
- ❖ Frames.

Purchases for resale must be supported by a properly completed [Nebraska Resale or Exempt Sale Certificate, Form 13](#), Section A, given to the seller.

Proofs. When finished photographs are used as proofs and will be permanently transferred to the customer, the photographer may purchase them tax exempt. The photographer must give a properly completed Form 13, Section A, to the developer or photofinisher who develops and enlarges the prints for use as proofs. If the proofs are not of finish quality and are of a temporary nature, they cannot be purchased tax exempt.

Ingredient and Component Parts. Products which become a physical part of the film, print, video, or other tangible item sold may be purchased tax exempt (for resale). Examples include:

- ❖ Blank video tapes, CDs, or DVDs;
- ❖ Chemicals which become a physical part of the film or print (see Photographic Chemicals below);
- ❖ Ink cartridges for printing photographs;
- ❖ Mounts, frames, matte paper, or other items used to frame a print for sale;
- ❖ Packing materials used to deliver merchandise sold; and
- ❖ Paper used to print photographs.

Tax exempt purchases of ingredient and component parts must be supported by a properly completed Form 13, Section A, given to the seller.

Note: If the photographs are transferred electronically to the customer, none of the items listed above become a part of the film or print being sold, so the exemption does not apply.

Photographic Chemicals. When photographers and photofinishers purchase chemicals to use in film or print processing, only those chemicals which are intended to become a physical part of the photographic product that is being processed may be purchased tax exempt (for resale).

❖ **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. The photographer or photofinisher may purchase these chemicals sales tax exempt for resale when the chemicals will be used to process photographic products which will be sold. The following chart shows which chemicals become a physical part of each of the specific products listed and can be purchased sales tax exempt for resale:

Photographic Product	Type of Chemical
Black and white negatives	Fixers with hardener toners
Black and white prints	Fixers with hardener toners
Color negatives	<ul style="list-style-type: none"> • Color developer/replenisher • Stabilizer/replenisher
Color prints	<ul style="list-style-type: none"> • Color developer/replenisher • Stabilizer/replenisher
Color slides or movies	<ul style="list-style-type: none"> • Color developer/replenisher final • Rinse/stabilizer/replenisher

Manufacturing Machinery and Equipment Exemption

Photographers and photofinishers may qualify for the sales tax exemption provided under [Neb. Rev. Stat. § 77-2704.22](#) if all of the requirements below are met (see [Revenue Ruling 01-08-2](#)):

- ❖ The photographer or photofinisher is manufacturing tangible personal property such as photographs or videotapes;

- ❖ The photographer or photofinisher's primary line of business is the manufacture and sale of tangible personal property; and
- ❖ The machinery or equipment is used at least 50% of the time for the purposes of manufacturing.

Manufacturing starts for the photographer or photofinisher when the photograph or video is physically created. Types of machinery and equipment which would qualify include: CD and DVD burners, and printers. Purchases of manufacturing machinery and equipment must be supported by a properly completed Form 13, Section B, given to the seller.

General Tax Information

Photographers and photofinishers must pay tax at the time of purchase on all their taxable purchases. If a vendor does not collect the Nebraska and applicable local sales tax (for example, the vendor is located outside of Nebraska, or the purchase is made by catalog or the Internet), the photographer or photofinisher must remit consumer's use tax directly to the Department. Consumer's use tax is calculated on the total purchase price including delivery, shipping, and handling charges paid to the vendor.

When items are withdrawn from a tax exempt inventory for use by the photographer or photofinisher, consumer's use tax is due on the cost of the items.

Example 5: A photographer takes a frame from inventory to frame a picture that will hang in the photographer's home or office; is given away as a gift; or is donated to a nonprofit organization. The photographer must remit consumer's use tax on the cost of the frame (regardless of retail value).

Obtaining a Permit. A Nebraska Sales Tax Permit is obtained by completing a [Nebraska Tax Application, Form 20](#), and returning it to the Department. This form is available at revenue.nebraska.gov.

Remitting the Tax. Sales tax collected from customers is remitted on the [Nebraska and Local Sales and Use Tax Return, Form 10](#).

Consumer's use tax is also calculated and remitted on Form 10.

Resource List

Revenue Regulations

- ❖ [Reg-1-012, Exemptions](#)
- ❖ [Reg-1-071, Credit for Tax Paid to Another State](#)

Revenue Statutes

- ❖ [Neb. Rev. Stat. § 77-2701.49](#)
- ❖ [Neb. Rev. Stat. § 77-2701.51](#)
- ❖ [Neb. Rev. Stat. § 77-2704.22](#)

Revenue Forms

- ❖ [Nebraska and Local Sales and Use Tax, Form 10](#)
- ❖ [Nebraska Resale or Exempt Sale Certificate, Form 13](#)
- ❖ [Nebraska License Application, Form 20](#)

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