

State Ruling

## **203-740, Photography Tax Guide-- Sales and use-- Taxability of persons and transactions-- Photography-- Photography tax guide**

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### **Sales and use: Taxability of persons and transactions: Photography: Photography tax guide.**

The Washington Department of Revenue has issued a guide on the application of sales and use and business and occupation (B&O) taxes to photography businesses. The following topics are discussed: apportionable B&O tax classifications, collecting sales tax—local tax rates, sales of photos to out-of-state customers, when the photographer is the consumer, digital photographs, sitting fees, portrait photography, third-party fulfillment services, event photography, licensing of photographs, photography for hire, school and student photography, duplicating prints, and crowdfunding income.

### **Business and occupation: Specific businesses: Photography: Photography tax guide.**

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Department of **Revenue Washington State**

## **Photography Tax Guide**

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### **Overview of Taxes and Terms**

**Business and Occupation Tax:** Washington's business and occupation (B&O) tax is levied on a business's gross receipts or gross income, without any deduction for costs of labor, materials, business taxes, or other costs of doing business, unless a valid exemption or deduction applies. This is different from an income tax which is applied to the net income of the business after

deducting business costs.

The nature of the business activity determines the appropriate B&O tax classification. B&O tax classifications commonly found in the photography industry include Retailing, Service and Other Activities, Wholesaling, and Royalties. Each B&O classification has its own tax rate. B&O tax is computed by applying the applicable B&O tax rate against the gross proceeds of sale or gross income of the business.

**Retail Sales Tax:** Businesses engaged in retail activities must collect and remit retail sales tax on their total charges unless a specific exemption applies. The sales tax rate is generally determined by the location where the photos are delivered to, and sales tax rates vary around the state. To determine the correct rate and location code for any given address, use the Department's *tax rate lookup tool*.

If you are an out of state business with activities, customers, or employees in Washington, please refer to our *Tax Guide for out of State Businesses*. You are required to collect and remit sales tax when selling to Washington customers if you have established nexus in this state.

**Use Tax:** Photographers owe deferred sales or use tax on items used as a consumer if Washington sales tax has not been collected by the seller, unless an exemption applies. Deferred sales or use tax also applies to retail services if sales tax was not paid at the time of purchase. This includes the purchase of remote access software (RAS) or digital automated services (DAS) that the photographer uses in the course of business. See "When the Photographer is the Consumer" below.

**Wholesale Sales:** Businesses making wholesale sales do not collect retail sales tax on their charges when they receive a valid reseller permit (or other resale document *approved by the Department*). Wholesale sales are those made to businesses buying a product or service for resale without any intervening use. The seller's wholesale income is subject to Wholesaling B&O tax. If a seller does not obtain a reseller permit (or approved resale document) from the buyer the sale is deemed to be a retail sale and the seller is required to collect retail sales tax.

**Reseller Permit:** You must submit an application to the Department to receive a reseller permit for your business. Photographers who have been issued a reseller permit may use it to purchase goods that will be resold to their customers in the normal course of business. Typical items purchased for resale include photograph quality paper, picture frames, etc.

**Royalties:** The photographer's gross income from licensing the right to use their intangible property to others is subject to B&O tax under the Royalties classification. See the "Licensing of Photographs" section of this guide for more information. The photographer does not need to collect sales tax from the customer on royalties transactions.

### **Apportionable B&O Tax Classifications**

Certain B&O tax classifications common to photographers are apportionable classifications; notably the Service and Other Activities and Royalties classifications. If you are "taxable" in another state or country, you may be able to apportion some of your income to that state or country, reducing the amount of income that is subject to Washington's B&O tax. "Taxable" means that a business meets at least one of the following criteria:

- Pay business activities tax in the other state or country
- Have more than \$53,000 of payroll in the other state or country
- Have more than \$53,000 of property in the other state or country
- Have more than \$267,000 of gross income in the other state or country
- Have at least 25 percent of your total property, payroll, or income in the other state or country

Note that the above dollar amounts are subject to adjustment based on the consumer price index (CPI- U). See WAC 458-20-19405.

For more information on the apportionment process, see WAC 458-20-19401 (Minimum nexus

thresholds for apportionable activities), WAC 458-20-19402 (Single factor receipts apportionment - Generally), and WAC 458-20-19403 (Apportionable royalty receipts attribution).

If you are an out of state business with activities, customers or employees in Washington, please refer to our *Tax Guide for out of State Businesses*.

### **Collecting Sales Tax - Local Tax Rates**

#### **Determining the Correct Local Sales Tax Rate for Sales of Photographs**

Sales of photos are sourced to the location where the customer receives the photo (i.e., the electronic file) if that location is known. Thus a photo received by a customer in Seattle would be sourced to Seattle (location code 1726), and taxed at Seattle's sales tax rate.

However, the seller may not always have the information of the location where photos are received. For example, the customer could download the images from their home computer, from a mobile device, or elsewhere without providing a delivery address to the seller. In this case the seller must use an alternate sourcing method as provided by RCW 82.32.730. When the actual place of receipt is not known, then an address available from the seller's business records is sufficient for sourcing the sale. If that information is not available, then the customer's billing address may be used.

#### **Sales of Photos to Out of State Customers**

You are not required to collect Washington sales tax when the photos are received by the customer at a location outside of Washington. This is true regardless of where the photos were actually taken. The Interstate and Foreign Sales deduction is used when filing your excise tax return to account for these sales. **Note:** Selling a photo to an out of state customer is different than licensing the right to use a photo to an out of state customer for B&O tax purposes. See the "Licensing of Photographs" section in this guide for more information. See also "Apportionable B&O Tax Classifications," above.

#### **When the Photographer is the Consumer**

Photographers are the consumers of equipment and supplies used in conducting their business, and must pay sales tax when purchasing these items. The photographer must pay deferred sales or use tax on the item if sales tax was not paid at the time of purchase. An example of when this can happen is when the photographer purchases equipment from an out of state vendor that does not collect sales tax from Washington customers.

Examples of equipment and supplies upon which the photographer must pay sales tax include:

- Cameras
- Lenses
- Computers
- Printers
- Computer software (including remote access software, or RAS)
- Props used for staging
- Office supplies

Examples of retail services that are subject to sales tax when purchased by a photographer include:

- Remote access software (RAS) - Means possession of the software is maintained by the seller, who charges the customer for the right to access it (e.g., charges for word processing or spreadsheet software that you access remotely)
- Digital automated services (DAS) - Means any service transferred electronically that uses one

or more software applications (e.g., online searchable databases)

### **Digital Photographs**

Washington State law generally treats digital photographs and tangible photographs (i.e., prints or photo files delivered on CD) in the same manner for tax purposes.

Digital photographs are considered digital goods when transferred electronically. "Digital goods" means sounds, images, data, facts, or information, or any combination thereof, transferred electronically. Sales of digital photographs are subject to Retailing B&O tax and retail sales tax.

"Electronically transferred" or "transferred electronically" means obtained by the purchaser by means other than tangible storage media. *RCW 82.04.192*. Therefore photo files delivered on CDs, USB drives or other tangible media are not digital goods.

### **Royalties and Digital Photographs**

The granting of specific intangible rights to use a photo is not a sale of digital goods subject to retail sales tax, even when the photo is transferred to the buyer electronically. The method of delivery - whether tangible (i.e., print or CD) or electronic - does not determine the taxability of the transaction.

See "Licensing of Photographs" in this guide for more information.

### **Digital Goods Used Solely for Business Purposes**

*RCW 82.08.02087* provides a sales tax exemption for digital goods used solely for business purposes. A photographer is not required to collect sales tax from their customer when each of the following is true:

- a) The customer is a business, **and**
- b) The customer will use the photo solely for business purposes, **and**
- c) The photo is delivered electronically, **and**
- d) The customer provides the seller with a completed *Digital Products and Remote Access Software Exemption Certificate*

"Business purposes" means any purpose relevant to the business needs of the taxpayer claiming an exemption under this section. Business purposes do not include any personal, family, or household purpose. Note that government agencies, whether state, local or federal, are not considered "businesses" for purposes of this exemption.

Note: When a photographer is licensing their digital photograph to the customer and reporting their income under the Royalties B&O tax classification, they are not required to obtain an exemption certificate from the customer. In this case it is the invoice or contract between the photographer and customer that establishes the Royalties nature of the transaction, and sales tax does not need to be collected on Royalties transactions. See "Licensing of Photographs" below for more information.

### **Sitting Fees (includes "session fees," "shooting fees," etc.)**

Photographers sometimes charge a separate sitting fee to their customers. This fee may also be referred to as a session fee, shooting fee, etc. For purposes of this guide we will use the term "sitting fee" when referring to these charges.

Portrait photographers, wedding photographers, and similar businesses that sell photographs to customers must collect and remit sales tax on all sitting fees. These sitting fees are for services rendered in respect to tangible personal property in the case of prints, or services rendered in respect to digital goods when the photographs are delivered electronically. In each case the charges are subject to the Retailing B&O tax, and the seller must collect and remit sales tax. In this context, "selling photographs" refers to sales of both digital photographs and prints, but does

not include income in the form of royalties as described elsewhere in this guide and in RCW 82.04.2907. Photographers that are selling the right to further exhibit their photographs do not need to collect sales tax on such charges (see “Sitting fees and royalties” below).

Photographers who charge sitting fees to customers but do not (for any reason) make subsequent sales of photographs to the customer may request a ruling from the Department on the taxability of their sitting fees.

Note: Photographers that make digital photographs available to customers for download for no separate charge are selling photographs (see examples 2 and 4 below).

**Sitting fees and royalties:** Income derived from licensing agreements (where the photographer grants the customer certain well-defined rights to use the photograph for further commercial display) is subject to Royalties B&O tax. This includes any separate charges for sitting fees. Thus photographers that solely license their work to others for further commercial display will report their sitting fee income under the Royalties B&O tax classification, and are not required to charge sales tax on such fees. Compensation for the use of intangible property is further explained under “Licensing of Photographs” in this guide. References:

RCW 82.04.192

RCW 82.04.050

**Example 1:** ABC Photography charges a sitting fee to Customer, and later provides proofs on their website for Customer to view. Customer is under no obligation to purchase any photographs at the time the sitting fees are charged, and Customer will be charged separately for digital photographs if they later decide to purchase any. ABC Photography must collect and remit sales tax on the sitting fees charged to Customer. ABC Photography's sitting fees are subject to sales tax consistent with RCW 82.04.192(6)(b)(iv)(B).

**Example 2:** ACE Photography charges Customer a session fee. In return for the session fee Customer receives ACE Photography's services to include taking the photos, editing the photos, and posting of the photos in digital format on ACE's website. Customer is then provided a password allowing them access to the photographs on the website, where Customer may download the photographs (or not) at their convenience. There is no additional charge to Customer for downloading the photographs. ACE Photography's fees are subject to sales tax consistent with RCW 82.04.192(6)(b)(iv)(B).

**Example 3:** ACME Photography takes school portraits for Customer and charges a sitting fee for this service. Prints will be sold to Customer as a separate charge. ACME correctly charges sales tax to customer on these sitting fees, which are services rendered in respect to imprinting tangible personal property (the prints).

**Example 4:** ACE Photography charges a sitting fee to Customer, and the photographs are made available for download from a third party's website. ACE Photography pays a subscription fee to the third party for this service. Customer may download photographs at their convenience from the third party's website for no additional charge.

ACE Photography must collect and remit sales tax on the sitting fees charged to Customer. ACE Photography's sitting fees are subject to sales tax consistent with RCW 82.04.192(6)(b)(iv)(B).

## **Portrait Photography**

Photographers who take portraits and sell the photos to their customers are generally required to collect sales tax from the customer on all charges, including sitting fees, travel reimbursements, touch up fees, and any other cost passed on to the customer. This is true whether the portraits are delivered as finished prints, are made available for download from a server, or are delivered to the customer on a CD or other tangible medium.

**Business and Occupation Tax:** Portrait photographers report their gross income under the Retailing B&O tax classification when selling photographs to the end user.

**Retail Sales Tax:** The photographer must collect and remit sales tax on all charges to the

customer.

## Sitting Fees

Sitting fees charged by a portrait photographer are subject to sales tax and the Retailing B&O tax. See the “Sitting Fees” discussion in this guide for more information.

## Sourcing Your Portrait Sales

Sales of prints are sourced to the location where the customer receives the prints. See “Collecting Sales Tax - Local Tax Rates” in this guide for more information.

### Third Party Fulfillment Services

A photographer may contract with a third party to provide prints or image files to the customer. Two common arrangements are as follows:

- **Third Party Host:** The photographer delivers the finished digital image files to the third party. The third party hosts digital image files on their server for a specified period of time. The customer may download the images at any time during that period.
- **Third Party Printer:** The photographer delivers the image files (or negatives) to the third party printer. The printer in turn produces the specified number of prints and delivers these to the customer, or makes the prints available for pick up.

In both cases the taxability of the photographer's income can vary according to the terms of the agreement between the photographer and the third party.

**Example 5:** After taking photographs, Acme Photography forwards them to a third party who then makes the photos available for download for the customer. Under the terms of the agreement, the third party is paid by Acme for this service. The third party does not charge the customer anything when the customer downloads the images. The customer is a consumer purchasing family photos. The photographer is making a retail sale of digital photos and must collect and remit sales tax on all charges to the customer. The photographer's gross income is also subject to the Retailing B&O tax.

**Example 6:** Using the same facts as Example 6 above, except Acme's customer is a business that will use the photos in an advertising campaign under a licensing agreement with Acme. Acme retains ownership of their intangible property, the photos. Acme's gross income is subject to the Royalties B&O tax. Acme should not collect sales tax from their customer. See “Licensing of Photographs” in this guide for more detail on licensing transactions.

For scenarios involving third parties that are not addressed in this guide, the Department recommends that you request a binding tax ruling. See “Need Assistance?” in this guide below for instructions on requesting such a ruling.

### Sourcing sales tax when photographs are fulfilled by third party

Sales are sourced to the location where the customer receives the photo if that location is known. Thus a photo received by a customer in Seattle would be sourced to Seattle (location code 1726), and taxed at the corresponding Seattle sales tax rate. See “Collecting Sales Tax - Local Tax Rates” in this guide for more information.

### Event Photography

Event photographers are contracted to take photographs by the event, such as weddings, birthday parties, etc. A typical contract might include:

- Shooting fees
- Travel expenses
- Charges for the photos themselves

- Related, miscellaneous expenses

**Business and Occupation Tax:** Event photographers report their gross income under the Retailing B&O classification when selling photographs to the end user.

**Retail Sales Tax:** The event photographer must collect and remit sales tax on all charges to the customer, including reimbursed travel expenses and other miscellaneous expenses.

## Sitting Fees

Sitting fees charged by an event photographer are subject to sales tax and the Retailing B&O tax. See the “Sitting Fees” discussion in this guide for more information.

## Sourcing your event income

For sales tax purposes, the income is sourced according to where the customer takes possession of the final product. The location of the event itself does not determine the sales tax rate. See “Collecting Sales Tax - Local Tax Rates” in this guide for more information.

**Example 7:** An Idaho couple decides to conduct their wedding ceremony in the city of Spokane. They contract with a Spokane-based photographer to cover their wedding. The contract includes a variety of prints and a CD with the photographs, all to be mailed to the couple's Idaho residence. The photographer should not collect sales tax from the customers on any portion of the contract because the photos are delivered outside Washington. The interstate and foreign sales deduction will be used by the photographer when filing their excise tax return.

**Example 8:** A Tacoma couple hires a local photographer to take pictures at their daughter's sixteenth birthday party. The birthday party is held at a restaurant in Seattle. After the party, the photographer sends a CD with the finished images to the couple by mail, at their Tacoma address. The Tacoma sales tax rate applies.

## Licensing of Photographs

The licensing of a photograph occurs when a photographer sells the intangible right to use their photograph to a customer for further commercial display, while retaining ownership of the photo. This is sometimes referred to as commercial photography. Thus the photographer's income arises not from the sale of photographs, but from licensing the use of their intangible property. Typical rights granted to customers include the right to publicly display, exhibit, publish, copy and sell the image.

Rights are defined and limited by contract, invoice or other relevant documentation. For example the customer may receive specific intangible rights to display the image for a two year period on billboards in the greater Spokane area, and within a catalog distributed nationally.

**Business and Occupation Tax:** The photographer's gross income from licensing the right to use their intangible property to others is subject to B&O tax under the Royalties classification.

**Retail Sales Tax:** Charges to the customer for the grant of intangible rights are not subject to sales tax. The photographer is not required to obtain a sales tax exemption certificate or digital products and remote access software exemption certificate from the buyer.

## Sitting Fees

Sitting fees associated with the granting of an intangible right to use the photo are subject to the Royalties B&O tax. See the “Sitting Fees” discussion in this guide for more information.

## Documentation

It is important that a photographer retain documentation establishing the nature of the transaction. The invoice, contract or other instrument of sale must clearly state the specific intangible rights that are being granted to the user of the photo. The fact that the invoice may have a line item for

“licensing” or “rights of usage” fees is not, in and of itself, determinative if the exact rights are not also described.

**Please note:** The outright sale of *all* rights to a photograph (e.g. right to copy, publish etc) is not subject to B&O tax under the Royalties classification. Instead, this income is subject to B&O tax under Service and Other Activities. The photographer is not required to obtain an exemption certificate from the customer. In this case it is the invoice or contract between the photographer and customer that establishes the “Service and Other Activities” B&O tax nature of the transaction, and sales tax does not need to be collected on such transactions.

## Royalties and Digital Photographs

When licensing the right to use a photograph to a customer as described above, the photographer's income will be subject to Royalties B&O tax and sales tax will not apply regardless of how the photograph in question is delivered to the customer. The method of delivery - whether tangible (i.e., print or CD) or electronic - does not determine the taxability of the transaction. Thus photographers engaged in this activity are not selling digital goods when the photo is delivered electronically, and are not required to collect sales tax.

**Example 9:** Photographer is hired by a business (the Customer) to take photos of Mount St. Helens. Customer requests that it have the right to use the images in their promotional materials and on their website. Photographer invoices the Customer for a total of \$6,400. Line items on the invoice include costs incurred by the Photographer such as travel expenses, equipment rentals and creative fees. However, the invoice states that Photographer retains ownership of the photos and grants the Customer the intangible right to use the images for four years in its promotional material distributed and displayed inside the United States, along with limited web site usage. The Photographer is engaging in a licensing activity and their gross income (in this case \$6,400) is subject to B&O tax under the Royalties classification.

**Example 10:** The same facts as Example 10 above, except the photographer adds a line item to the invoice for 100 posters of Mount St. Helens at \$10 per copy for an additional charge of \$1,000. The invoice total is now \$7,400. Photographer still pays Royalties B&O tax on the licensing activity of \$6,400. The photographer pays Retailing B&O tax on the \$1,000 charge for posters, and must collect and remit sales tax on the \$1,000 sale of posters. The photographer has engaged in two separate business activities taxable under different B&O categories.

## Apportioning Your Royalties Income

Income reported under the Royalties B&O tax classification is apportionable. See “Apportionable B&O Tax Classifications” in this guide for more information.

## Photography for Hire

When a photograph is made for hire, the photographer contractually agrees that all rights to the photograph they have taken will belong to the customer. Photography for hire is distinguished from other types of photography in that the photographer for hire is selling his or her services to create the photograph, but never owns the intangible rights to the photograph they have created.

**Business and Occupation Tax:** Income earned from producing photographs for hire is subject to B&O tax under the Service and Other Activities classification.

**Retail Sales Tax:** Charges to the customer are not subject to sales tax.

## Apportioning Your Service and Other Activities Income

Income reported under the Service and Other Activities B&O tax classification is apportionable. See “Apportionable B&O Tax Classifications” in this guide for more information.

## School and Student Photography

**Business and Occupation Tax:** Photographers selling prints, albums and related materials to students or parents are subject to B&O tax under the Retailing classification on their gross proceeds of sale.

**Retail Sales Tax:**

○ **Sales made directly to students or parents**

A photographer must collect sales tax from their customer on the gross (total) charges, including sitting fees.

○ **Sales to students using the school as an agent**

A photographer who uses schools to collect the sales price of school pictures must collect and remit sales tax on the full selling price. There is no deduction for any amounts paid to the schools or others as fees or commissions. See also *ETA 3017.2009*.

**Sitting fees**

Sitting fees charged by a school photographer are generally subject to sales tax and the Retailing B&O tax. See the "Sitting Fees" discussion in this guide for more information.

**Duplicating Prints**

If your business duplicates prints for customers, please refer to WAC 458-20-141 for more information.

**Crowdfunding Income**

Crowdfunding is a term that describes the act of facilitating the collection and distribution of money to support projects that are created by other people, businesses or organizations. Project creators often use a third party website to solicit monetary contributions from the public. The project creator typically receives the contributions only after the project's funding goal has been met.

A photographer's gross income earned from crowdfunding pledges is generally subject to B&O tax and/or sales tax according to the rewards that are given to contributors. For example: when a contributor receives a poster in exchange for a \$25 pledge, that \$25 of income received by the photographer is subject to Retailing B&O tax. The photographer must also report this amount on the retail sales tax line of their return.

We recommended that photographers earning income from crowdfunding projects contact the Department in writing (see "Tax Rulings" below) for specific written instructions on how to report their income. Reporting obligations will vary depending on the project and type of rewards.

**Need Assistance?**

The Department of Revenue offers a variety of services to help you understand your Washington State tax obligations and file your returns correctly:

**Telephone Information Center:** To get answers to your general tax questions and for assistance in filing your returns, please call our Telephone Information Center at 1-800-647-7706.

**Tax Rulings:** If you have a tax-related question specific to your business, you may request a binding tax ruling from the Department at [rulings@dor.wa.gov](mailto:rulings@dor.wa.gov). The request must identify the business in question and include all pertinent facts. Tax rulings are binding on both the taxpayer and the Department of Revenue.

**Tax Rate Lookup Tools:** The Department has a GIS tool for finding the correct sales tax rate for any location. We also have apps for your mobile device. Go to [dor.wa.gov](http://dor.wa.gov) and select "Find a sales tax rate."

**Local Field Offices:** The Department has several field offices located across Washington. To

locate the office nearest you, go to dor.wa.gov and select “Contact Us.”