

Photography and Video Production

169

Sales Tax Fact Sheet 169

Fact Sheet

What's New in 2018

We clarified when sellers are required to collect local sales taxes. See Local Sales and Use Taxes on page 4.

This fact sheet will help to explain how Minnesota sales and use tax applies to photography and video production.

Taxable sales

Taxable products include:

photos	film
videos	negatives
slides	positives

Examples of taxable photography:

aerial photography	photo booth sales
architectural photography	photography sold for use in non-taxable services such as web page design
model portfolios	portraits
passport photos	school pictures
photos at amusement parks, sports events, dances, with Santa, etc.	weddings
	videotaping an event

Taxable components of sales price

All costs in the production of photography are taxable. Below are examples of things that become part of the final price of the photo and are taxable, even when separately stated on the customer's invoice:

delivery charges	equipment rental	lodging	meals	models	prop fees	stylists	travel expenses (including taxes paid)	wardrobe
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Taxable transactions

Sales or use tax applies to charges for the following types of transactions:

leases	retake charges
license to use	sales
photo bank charges	stock photography charges
rentals	

Digital Products

Beginning July 1, 2013, video production is taxable whether delivered electronically or by tangible means. Minnesota sales and use taxes apply to sales and the granting of a right to use for a consideration of "specified digital products" and "other digital products" transferred electronically on a temporary or permanent basis.

For more information, see Fact Sheet 177, *Digital Products*.

Charges for digital photographs transferred electronically by means other than tangible storage media are not taxable.

Sitting fees, either in studio or on location, are taxable if the customer buys the photographs. If the customer rejects the photos or never takes possession of them, the sitting fee is not taxable because there is no taxable sale of photography.

Example 1. A manufacturer hires a photographer to take photos of their facilities located throughout the United States. The photos will be hung in the lobby of corporate headquarters in Minnesota.

The photographer must charge tax on the total selling price of the photos, including all expenses such as airfare, meals, hotel rooms, film, processing, etc.

Example 2. A company needs product photos to display at their annual dealers meeting. A photographer is hired, takes pictures, and sends several proofs to the company for selection and approval. Some proofs are

transferred electronically, some are sent by messenger. The photos are finished and delivered to the company in Minnesota.

The entire selling price of the final photos is taxable, including all charges for proofs, regardless of how they are transferred to the customer.

Example 3. A photographer rents lighting equipment to get a special effect at a photo shoot. This rental fee is passed on to the customer as a separate item.

The rental fee is part of the total selling price of the photos and is taxable (unless a particular exemption applies as discussed later in this fact sheet).

Advertising

Photography used in advertising is generally taxable. See Sales to advertising agencies on page 2.

Equipment sales

If you sell or lease equipment or other items that were used in your business, the sale may be taxable. For more information, see Fact Sheet 132, *Isolated and Occasional Sales*.

Exempt sales

Customers claiming exemption from sales tax must give the photographer a completed Form ST3, *Certificate of Exemption*.

Industrial production

Photography used in industrial production is exempt if the customer gives the photographer an exemption certificate. Examples include photos used in package or product design and product instructions.

Resale

Photographic products purchased for resale are exempt if the customer gives the photographer an exemption certificate.

Electronic delivery

Beginning July 1, 2013, sales of “specified digital products” and “other digital products” delivered electronically are taxable. For more information, see Fact Sheet 177, *Digital Products*.

Charges for digital photographs transferred electronically by means other than tangible storage media are not taxable. The invoice must clearly state that the photograph is transferred electronically. No exemption certificate is necessary.

Exempt publications

Photography is exempt if it is used in publications that are regularly issued to the general public at least four times a year. Examples of exempt publications include newspapers, newspaper inserts, magazines, newsletters, annual reports (if quarterly reports are issued), catalogs, bulletins, circulars and flyers. The customer must give the photographer a completed Form ST3, *Certificate of Exemption*.

TV commercials

Photography used in the production of TV commercials is exempt. The exemption includes rentals of cameras and other equipment used in pre-production or production. Purchases of equipment are taxable. A producer must give a completed Form ST3, *Certificate of Exemption*, to purchase photography or rent equipment exempt from tax. For more information, see *Fact Sheet 163, TV Commercials*.

Delivered outside Minnesota

Photography sent or delivered to a customer outside Minnesota is exempt. No exemption certificate is required; however, records must indicate that the items were shipped to a customer outside Minnesota. Tax may be due in the state of destination depending on the other state’s tax laws.

Direct Pay authorization

Companies with Direct Pay authorization remit use tax directly to the state. These customers must give the photographer a completed Form ST3, *Certificate of Exemption*. They may not buy services using this authorization.

Qualifying nonprofit organizations must give the seller a completed Form ST3, *Certificate of Exemption*.

Sales to governments

The federal government and its agencies can buy goods and services exempt from sales tax.

For more information about sales to the federal government, and sales to state and local governments, see Fact Sheet 142, *Sales to Governments*.

Sales to advertising agencies

Photography sold to an advertising agency is taxable unless the agency provides a properly completed exemption certificate.

If an agency uses a photo in nontaxable advertising services such as brochures or posters, or to develop a web page, the photo is taxable.

Photos are exempt when purchased by an agency for use in:

- an exempt publication, such as a newspaper or magazine ad
- the design of packaging material or instructions for a product that will ultimately be sold at retail
- specialty advertising such as mugs or calendars that will be sold to clients
- developing training manuals or videos to be re-sold to clients

Sometimes photography has both taxable and exempt uses. An ad agency may give a photographer an exemption certificate to show that they will be using photography for multiple purposes. This puts the responsibility on the agency to self assess use tax on the photography that is put to a taxable use, and the photographer should not charge any sales tax.

Percentage exemption not allowed for photography. An advertising agency may **not** issue an exemption certificate to claim exemption on a **percentage** of their purchase of photography used to produce non-taxable advertising sent out of state. Since the photo itself does not leave the state, but rather reproductions of the photo, it is one hundred percent taxable in Minnesota.

When an ad agency contracts to use **stock photography**, each contract is considered separately. For example, if an agency contracts to use stock photography for use in a newspaper ad, it is exempt since the newspaper is an exempt publication. If some time later, the agency contracts to use the same photo in an advertising brochure, the charge is taxable.

The sale of photography to an ad agency for its own use is taxable.

A photographer may act as an ad agency if he/she works directly with the advertiser and bills the advertiser directly. The sales invoice given to the client must indicate that it is for creative advertising/promotional services. For instance, a photographer may be hired by the advertiser to produce a promotional poster—the photographer does the original concept through the entire production process. In this case, the photographer is acting as an advertising agency and is selling a nontaxable advertising service. The photographer does not charge the advertiser sales tax on the service but must pay tax on all inputs used to produce the poster. Use tax is owed on the cost of materials used to produce the poster if the items were originally purchased exempt.

Exempt purchases

Items used or consumed in producing photography that will ultimately be sold at retail in a tangible form can be purchased exempt. Items such as film, chemicals, paper and ink cartridges for printing photos, props used once (perishable), fuel used in production, flash bulbs, and other consumables used in the production process may be purchased exempt from tax by giving the supplier a completed Form ST3, *Certificate of Exemption*.

Note: Beginning July 1, 2013, items used or consumed in producing certain digital products also qualify for this exemption. For more information, see Fact Sheet 177, *Digital Products*.

If a photographer also does film processing, the "store envelopes" used by the customer to provide instructions for film processing and the tear-away claim check are also exempt.

Taxable purchases

Furniture, lighting, computers, printers and other equipment used for administration, tracking, or any use other than production, are taxable.

Production equipment

The capital equipment exemption may apply to production equipment. See Capital equipment below.

Travel expenses

Photographers must pay tax on purchases of transportation, meals and lodging. These items may not be purchased exempt for resale, even when invoiced to a customer as part of the charge for taxable photography.

Capital equipment

Photographers and videographers may qualify for the capital equipment exemption on purchases or leases of capital equipment and its repair or replacement parts. To qualify, the equipment must be primarily used in Minnesota to manufacture or fabricate tangible personal property, digital audiovisual works or digital audio works to be sold ultimately at retail.

Examples of equipment that may qualify include:

cameras	bulbs
props (see below)	batteries
posing equipment	tripods
backdrops	production computers
processing equipment	and software
lighting equipment	accessories and attach-
printing equipment	ments to production
	equipment

The capital equipment exemption is not allowed for equipment used primarily to produce digital photography that is electronically delivered to a customer, or to provide nontaxable advertising services.

Furniture, lighting, computers, printers and other equipment used for administration, tracking, or any use other than production, do not qualify for the capital equipment exemption.

Note: Beginning July 1, 2015, the capital equipment exemption is allowed at the time of purchase. Before that date, you had to pay the tax and apply for a refund.

To purchase exempt, you must give the seller a completed Form ST3, *Certificate of Exemption*. Specify the Capital equipment exemption.

For more information, see Fact Sheet 103, *Capital Equipment*.

Props

Beginning July 1, 2015, props and sets that qualify for the capital equipment exemption are exempt at the time of purchase.

Props and sets purchased or rented for photographs that are transferred electronically to a customer or for producing nontaxable advertising are taxable. No exemptions apply.

Before July 1, 2015, props and sets used to produce photography (including digital products) sold at retail are taxed as follows.

1. Props and sets purchased but only used once and disposed of are consumed in industrial production and are exempt. The photographer gives the vendor an exemption certificate.
2. Props and sets purchased and kept for future use are taxable. However, a capital equipment refund may apply.
3. Props and sets that are rented or leased are taxable. However, a capital equipment refund may apply.
4. Props and sets purchased or rented for photographs that are transferred electronically to a customer or for producing nontaxable advertising are taxable. No exemptions apply.

Use Tax

Use tax applies when you buy taxable items or services, either in or outside of Minnesota, for use in your business without paying sales tax to the vendor.

For example, if you buy a camera from a mail order company or over the Internet and the seller does not charge sales tax, you must pay use tax.

Other items commonly purchased that are subject to use tax if sales tax was not paid at the time of purchase include computer hardware and software, office supplies, and business furniture, fixtures, and decorations. For more information, see Fact Sheet 146, *Use Tax for Businesses*.

Report state and local use tax when you file your sales tax return.

Local Sales and Use Taxes

If you are located in or make sales into an area with a local tax, you may owe local sales or use tax. For more information, see Fact Sheet 164, *Local Sales and Use Taxes*.

Legal References

Minnesota Statute 297A.61

subd. 3, Sale and purchase

subd. 7, Sales price

Minnesota Statute 297A.68

subd. 2, Materials consumed in industrial production

subd. 10, Publications; publication materials

subd. 11, Advertising materials

subd. 30, Television commercials

Minnesota Rule 8130.0700, Producing, fabricating, printing, or processing of property furnished by consumer

Minnesota Rule 8130.8800, Commercial artists and photographers

Minnesota Rule 8130.9250, Advertising

Other Fact Sheets

103, *Capital Equipment*

132, *Isolated and Occasional Sales*

133, *Advertising*

145, *Industrial Production*

146, *Use Tax for Businesses*

163, *TV Commercials*

164, *Local Sales and Use Taxes*

177, *Digital Products*