

M e m o r a n d u m**420.0675**

To: X-----

Date: February 8, 1984

From: Charles J. Graziano

Subject: Application of Tax to Lump-sum Billing by X-ray Laboratories

X----- has recently raised a question concerning a matter discussed in my memo of July 18, 1983 to you. The pertinent part of this memo (copy enclosed) concerns taxation of lump-sum charges by veterinarians for professional services (not related to the sale of tangible personal property) and x-rays. Because of X-----'s inquiry, X----- has asked me to write to you in order to clarify and elaborate on our position regarding this matter.

In my memo, I stated that a proration of the lump-sum charge must be made by the veterinarian between the charges for the sale of x-rays and for the nontaxable services. Due to the recent amendment to Section 6020 of the Revenue and Taxation Code (SB1252, Ch. 301, Stats. 1982), an allocation is required in transactions where a veterinarian makes a "sale" of x-rays, as that term is defined under Section 6006 of the Revenue and Taxation Code. We understand that it is a common practice among veterinarians for them to retain title and possession of the x-ray films they produce for the diagnosis of animals they treat. In our view, a taxable sale does not occur in such a situation. Therefore a veterinarian is to be considered a consumer of the materials and supplies he uses to produce diagnostic x-ray films for his own use, provided the veterinarian does not transfer title or possession of these x-ray films to his customers. Also, it is our opinion that a sale does not occur when there is a temporary transfer of possession of x-ray films between veterinarians pursuant to Section 2031 (b)(2) of Title 16 of the California Administrative Code, Chapter 20, "Board of Examiners in Veterinary Medicine." As provided under this section, a veterinarian must transfer possession of x-ray films he takes on animals he treats to another veterinarian making a written request for such films with the permission of the animal's owner. This section further provides that the transferred x-ray film must be returned to the veterinarian who originally treated the animal within a reasonable time.

It is our position, however, that a taxable sale occurs when a producer of x-ray films (e.g., an x-ray lab) furnishes x-ray films of animals, for a consideration, to veterinarians who order them. Under these circumstances, the producer is a retailer of tangible personal property. Also,

such a producer of x-rays is considered a retailer of diagnosis or report to the veterinarian along with the x-ray film, or it may retain title to the x-ray and permanently store the film after utilization by the veterinarian (see People v. Grazer (1956) 138 Cal.App.2d 273).

CJG:ba