

BILL # SB 1320

TITLE: sales tax exemption; commercial photography

SPONSOR: Leff

STATUS: As Amended by Senate Finance

PREPARED BY: Jay Chilton

FISCAL ANALYSIS

Description

As amended, this bill would provide an exemption from the Transaction Privilege Tax (TPT) for certain types of photography transactions. Transactions would be exempt from the TPT if the purchaser acquires a photograph or the rights to a photographic image for incorporation into another work, such as a book, brochure, magazine, advertisement, or Web site. The bill would become effective retroactive to August 1, 1995.

Estimated Impact

The bill, as amended, may cause a loss of revenue. Based on available information the fiscal impact is difficult to determine, as the current practice regarding paying TPT by commercial photographers is unclear.

There would be, however, a General Fund cost associated with paying refunds for past TPT paid. The combined total of all potential refunds granted under the retroactivity provision of this bill is capped at \$10,000.

The Department of Revenue does not have an estimate of the bill's fiscal impact.

Analysis

As amended, the bill would only exempt certain commercial photography transactions from the TPT. The exemption provided by this bill covers the sales of photographs by photographers to businesses or other entities, which will then include the photographs in their own materials, such as advertisements, brochures, magazines, newspapers, videos, motion pictures, and Web sites. Under a July 2006 ruling by the Department of Revenue, commercial photography transactions are subject to the TPT, including both the sale of photographs and the fees charged in contracts for service.

Commercial photographers are often hired by clients under contracts for service. In this situation, photographs are often given, whether as prints or digital copies, to the client as part of the fee for the contract. Under the Department of Revenue ruling, these transactions would be subject to TPT. It is unclear, however, whether photographers have already begun to conform to the 2006 Department of Revenue ruling to charge sales tax in these situations. To the extent that photographers are not yet charging TPT in these cases, the fiscal impact of the bill would be to forego a future revenue gain rather than to lose existing revenue.

By contrast, photographers also may sell the rights to a photograph to a client. It is more likely that photographers have been charging TPT in this situation than in that described in the previous paragraph because the rights may be viewed as tangible personal property rather than simply the hiring of a photographer for a service. To the extent that photographers are currently charging TPT in these cases, the bill will cause a loss of existing revenue, though the magnitude of the loss cannot be determined.

The Department of Revenue estimates the total TPT revenue from the photographic services industry to be approximately \$5 million. The photographic services industry is comprised of both commercial photography and portrait studios. The Department of Revenue is unable to determine how much, if any, of the TPT is collected from the types of commercial transactions covered by the exemption.

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Local Government Impact

TPT revenues are shared with local governments and any reduction in these collections would result in decreased funding for local governments, although the magnitude cannot be determined.

2/16/07