Member Associations of
PRINTING INDUSTRIES OF CALIFORNIA

Printing Industries Association of Southern California
Phone: (323) 728-9500 Web: www.piasc.org

Printing Industries Association of San Diego
Phone: (858) 800-6900 Web: www.piasd.org

(formerly Printing Industries of Northern California) Visual Media Alliance
Phone: (415) 495-8242 Web: www.visualmediaalliance.org

# WatchDog

Guarding the Business of Print September 2016

### Headline Summary



## Sales Tax on Proofs

There has been some confusion regarding the Board of Equalization's position as to the basis for determining the value of a printed ("hard") proof that is to be taxed. To address this issue, PIC reached out to the Board of Equalization (BOE) to help clarify the issue.

The eight page response to our inquiry can be distilled down to the following points:

- When the completed job is transferred electronically, it is not taxable since no tangible personal property was sold. When the completed job is sold in tangible form or on electronic media, it is a taxable transaction.
- **Soft Proofs**. Proofs sent electronically to a client are not taxable since no tangible personal property changed hands, no matter if the completed job is transferred electronically or in tangible form.
- **Hard Proofs**. Printed proofs may or may not be taxable depending on the ownership of the proof, no matter if the completed job is transferred electronically or in tangible form.
  1. Hard proofs **are not taxable** if the printer or prepress house claims to gives the proofs to the client to review but ultimately retains possession of the proof. In this instance, the printer or prepress house would owe tax on the paper for the proof at the time of purchase of the paper.
  2. Hard proofs **are taxable** if the proofs are given to the customer to review and the customer ultimately keeps the proofs. Proofing material can be purchased for resale. The taxable amount of the proofs would be the cost of the paper on which the proofs are printed, any charge for retrieving the proofs from archives and printing the proofs, and further markup on the proof. These charges do not have to be broken out on the invoice—that is, they can be lump sum stated as "proofs" or some other identifying term.

For more information, please contact Gerry Bonetto at (323) 728-9500, Ext. 248 or *gerry@piasc.org*.

## Employee Screening

PIA's Member Discount Partner, Employers Choice Screening, has provided us with a document on employers' violations of the 2012 Fair Credit Reporting Act (FCRA) when screening potential employees.

The Act itself runs some 108 pages, and creates a number of items for which employers can be cited and sued by plaintiff attorneys. The Employer Choice Screening report cuts through the regulation and discusses different ways employers can fall victim to such lawsuits.

You can get the report at the following link: *http://bit.ly/ECO_Top5*.

## Stormwater Permit: Annual Recertification

Those companies that obtained a No Exposure Certification (NEC) must re-certify their permit each year. Companies may have already received notices from the California Water Boards that recertification must take place by October 1st of each year.

The recertification states that no new activity has taken place at the facility —that is, outside industrial activities that may be exposed to storm water. Certifications must be made electronically; to do so, log into SMARTS to begin the re-certification: *http://smarts.waterboards.ca.gov*.

# California Supreme Court to Decide "De Minimus" Time

Questions continually arise regarding counting small, or "de minimis," periods of work-time. Lawsuits have been filed over small amounts of uncompensated time that is spent either before or after the employee clocks in.

The California Supreme Court has now agreed to hear the question of when an employer must pay employees for such de minimis time. A decision in this case will have significant implications for employers and likely will provide much needed guidance in this area.

The case involves an employee of Starbucks who claimed that he should have been compensated for the brief time he spent closing up the store after he clocked out. For example, he argued that, after he clocked out, he engaged in activities for which he was not paid:

- Exiting the store (within one minute) and locking the door after setting the alarm.
- Walking co-workers to their cars pursuant to store safety guidelines (took about 45 seconds).
- Occasionally reopening the store to let a co-worker grab a forgotten personal item.
- Bringing patio furniture in once every couple of months.

A federal district court granted Starbucks' motion to have the case dismissed before trial, ruling that the employee was not entitled to payment for it.

The employee then appealed the denial of his claim to the Ninth Circuit. As a result, the Ninth Circuit asked the California Supreme Court to decide whether the federal Fair Labor Standards Act's de minimis doctrine also applies to claims for unpaid wages in California, noting that California wage and hour laws often provide greater protections to employees than federal laws.

## San Mateo Raises Minimum Wage

Cities and Counties throughout the state continue to set their own minimum wage rates. The city of San Mateo is the latest to do so, passing an ordinance to raise the local minimum wage beginning January 1, 2017.

San Mateo's adopted minimum wage schedule is as follows:

| Year | Rate |
|---|---|
| January 1, 2017 | $12.00 |
| January 1, 2018 | $13.50 |
| January 1, 2019 | $15.00 |

Beginning January 1, 2020, and every year thereafter, the minimum wage will increase based on any increase to the CPI for San Francisco-Oakland-San Jose, making it permanently higher than the state's minimum wage. A decrease in CPI will not result in a decrease in the minimum wage.

San Mateo's $12 per hour increase is higher than the January 1, 2017 state increase to $10.50/hour. (Under the state provision, employers with 25 or fewer employees don't begin scheduled increases until 2018.)

Any company that has employees doing business in San Mateo will have to pay the higher minimum wage rate for time worked in the city's geographic boundaries.

The San Mateo ordinance includes a required minimum wage notice which has yet to be posted. You can track updates by going to San Mateo's designated Minimum Wage Ordinance website (*http://www.cityofsanmateo.org/index.aspx?nid=3278*).

Representatives from 13 of Santa Clara County's 15 cities endorsed a regional $15 by 2019 minimum wage at Thursday's meeting of the Cities Association of Santa Clara County.

The vote is non-binding, and it will be up to each city council to modify their wage ordinances to their own likings.

## California Temporary Tax

Californians adopted Proposition 30 in 2012, a "temporary" tax that, according to the governor, state legislators, and teachers' unions, would save the state's education system by giving it an influx of at least $6 billion.

The initiative increased income tax on people earning more than $250,000 through 2018, and increased sales tax on everyone, through the end of this year (2016).

The California teachers' unions and the Service Employees International Union (SEIU) are looking to keep the higher income tax component through 2030 by the November ballot initiative Proposition 55—California Children's Education and Health Care Protection Act of 2016

During the recession, spending dipped for K-12 schools and community colleges. The decrease, however, was not significant. Moreover, since the end of the recession, California's education spending has increased more than 40 percent. So far, the teacher's union and hospital association have contributed $28 million to pass the proposition.