



# This Week in State Tax (TWIST)

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## Mississippi: Supreme Court Holds Digital Photography Service Is Not Taxable

The Mississippi Supreme Court recently held that a taxpayer's sales of wedding photography packages were not subject to sales and use tax. The taxpayer offered photography packages at varying prices. After capturing photos during the wedding, the taxpayer adjusted and cropped the images. Every package included a transfer of digital images via a DVD, flash drive, or a tablet. The more expensive packages included options such as engagement photo sessions, slide shows, linen prints, and coffee-table picture books. The Mississippi Department of Revenue assessed sales and use tax on the basis that the taxpayer was selling tangible personal property. After the Board of Review upheld the Department's assessment, the taxpayer appealed to the Lafayette County Chancery Court. That court held that the taxpayer was selling not selling tangible personal property or engaging in a taxable business activity. The Department appealed to the State Supreme Court.

Under Mississippi law, sales and use tax is imposed on tangible personal property, specified digital products, and certain enumerated services. The Department argued that the taxpayer's services were taxable because customers were receiving their photos in tangible form through a flash drive or disk. The court disagreed, however, finding that the flash drive and disk were incidental to the taxpayer's photography service. In the court's view, the customers were paying for the digital photographs of their wedding, not the tangible drive or disk. The court also found it significant that the taxpayer paid sales tax on the drives, disks, and other media that were purchased, as well as the photobooks he gave to certain customers. The court further noted that the sales of digital images were not taxable specified digital products, as the definition of the term does not include still digital images. Finally, the court rejected the Department's argument that the taxpayer was providing taxable photo finishing services because he edited the digital photos. In the court's view, there was no indication in Mississippi law that digital photo editing was intended to be included in "photo finishing" services, which was first included as a taxable service in 1955. Please contact [Randy Serpas](#) with questions about *Department of Revenue v. EKB, Inc.*



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