

**STATE BOARD OF EQUALIZATION**

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April 28, 1992

Ms. C--- L. P---
Office Manager
A--- V--- Interiors
XXX --- Avenue
--- ---, CA XXXXX

SR -- XX-XXXXXX

Dear Ms. P---:

Your March 11, 1992 letter to Ms. S. K. Barbour of the State Board of Equalization's Return Review Unit has been referred to the legal staff for reply. You asked whether we agree with your following interpretations of the application of tax to various charges by A--- V--- Interiors:

"1. Our estimate contracts do not have to list labor separately as long as tax exempt repair and installation labor is identified on the subsequent billing to the client? The problem is that on some estimates, for instance reupholstery, the customer is aware of the per yard price of the fabric being used, so if we list the labor charges separately it will reveal our profit."

We agree. You are not required to separately state charges for repair and installation on your estimates to your client. However, if you do not segregate such charges on your final invoice to the client, the retail selling price of parts and materials you furnish in connection with the repairs will be determined by the Board's audit staff based on information available to it unless the retail value of the property is ten percent or less of the total charge. (Sales and Use Tax Reg. 1546, Installing, Repairing, Reconditioning in General, subd. (b)(1)). When you reupholster furniture, you are required to segregate charges for materials (other than charges for findings) from labor charges in your records. (Reg. 1550, Reupholsters, subd. (e)).

"2. For lump-sum contracts such as carpeting we should include everything in one amount on our invoice? Can we list moving furniture at the bottom of the estimate since we often don't know if a client will do this himself or have our installers do it?"

If you bill your customer on a lump-sum basis for your contract to furnish and install carpeting, and you do not add sales tax reimbursement to the contract, you are the consumer of the materials you use. Sales tax applies to the sale to you of the materials. Tax does not apply to your charge to the customer for your furnishing and installing the carpeting. Accordingly, you may separately list the charge for moving furniture, either on your estimate or on your invoice.

“3. Delivery charges to a client by our subcontractor, i.e. upholsterer, are non-taxable provided we do not charge the client more than we are billed? Does this include picking up the piece of furniture also? They are usually billed together, i.e. ‘Pick-up and Delivery \$50.00.’”

In order for you to exclude the transportation charge from your taxable gross receipts, you must separately state the nontaxable delivery charges from the other taxable charges. We cannot give you an opinion as to the application of tax to the charge for “pick up” without a description of the charge.

“4. On a lump-sum contract where we, as a consumer, have paid the tax to the dealer on the purchase price of the materials, should the price of the materials be listed on line 10b? Cost of Tax Paid Purchases Resold Prior to Use, and the difference between this taxable amount and the selling price quoted to our client be listed on line 10E, Other – Lump-Sum Contract?”

Since this is an administrative matter rather than a legal one, we discussed this question with the audit staff of the San Jose District Office. You should report the entire charge to the customer on line 1 of your Sales and Use Tax Return and take a deduction on line 10(e) of your return with the applicable explanation of why you are deducting the amounts.

“5. Is it alright to list a per yard price as well as a total on a lump-sum contract, i.e. furnish and install 100 yards of carpeting at \$25.00 per yard = \$2500.00?”

Yes, where you are the consumer of materials and have paid sales tax reimbursement or use tax on the purchase of the material, you may prepare the invoice as you suggest.

“6. When reupholstering a piece of furniture which has loose back pillows are they considered part of the reupholstery taxable using the 80% - 20% rule since they are functional pillows, in other words, the piece of furniture is not usable without them?”

Yes, we believe that the pillows of a loose-pillow back piece of furniture are component parts of the furniture. If you do not segregate in your records the charges between taxable fabrication and nontaxable installation labor, 80 percent of your charge is nontaxable labor and 20 percent is taxable fabrication labor and findings.

“7. If we buy linoleum directly from our installer and have them install it, prep the floor, etc., do we pay tax on the linoleum or have they already paid tax to their supplier?”

Assuming that the installer bills you on a lump-sum basis, the installer is the consumer of the linoleum, underlayment, and other materials which the installer furnishes in connection with installing the linoleum. The installer should pay sales tax reimbursement or use tax on his or her purchase of the materials. If the installer adds sales tax on a retail or marked up price of the materials, the Board will generally consider the installer as the retailer of the materials, and the installer must report and pay sales tax reimbursement on the billed price.

“8. On a lump-sum carpeting contract we pay no tax on the installation bill, which includes labor, pad, tack strip, pull-up and haul, etc.?”

We assume that this is a follow-on to the previous question where the installer bills you on a lump-sum basis and is the consumer of the materials. In such case, you are correct that you do not owe tax on your charge for the contract.

“9. If we buy a carpet remnant from our carpet installers and have them make an area rug from it do we pay tax on the remnant as well as the fabrication labor?”

Yes, if you sell an area rug which the installer has made from a carpet remnant, tax applies to your entire charge for the rug, including the cost for the labor to make the rug from the remnant.

“10. Are receiving charges on delivery taxable?”

We do not understand what you mean by this question; however, if you sell tangible personal property and make a charge for “receiving” which is not transportation from your place of business or other point from which shipment is made directly to the purchaser, you should not include the charge in your nontaxable delivery charge. We cannot give you an answer as to the application of tax to the “receiving charge” without a description of the property or labor which the charge represents.

As you know, we have made a number of assumptions in answering your letter which may or may not be correct. We suggest that you contact us again if our assumptions are in error. In such case, please provide a complete description of the work you perform and the tangible personal property you provide to your client.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel