

**STATE BOARD OF EQUALIZATION**

450 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
TELEPHONE (916) 324-2634
FAX (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

KATHLEEN CONNELL
Controller, Sacramento

JOHN CHIANG
Acting Member
Fourth District, Los Angeles

March 20, 1998

E. L. SORENSEN, JR.
Executive Director

Mr. A--- N---
S--- E---, Inc.
S--- S--- F---
XXXXX --- Blvd.
--- ---, CA XXXXX

Re: S--- E---, Inc.
SR -- XX XXXXXX

Dear Mr. N---:

This letter responds to your letter dated December 31, 1997 to Ms. Jane Burgoon of the State Board of Equalization's Return Analysis Section. (On February 17, 1998, Ms. Burgoon forwarded your letter to the Board's Legal Division for response.) You ask that we confirm that you are properly reporting as nontaxable, charges which you describe as "labor charges" and "delivery charges."

Facts

S--- E---, Inc.'s (S---) application for a seller's permit which is on file with this agency indicates that S--- is a florist. Your letter states that customers hire S--- to provide various services and items for social events such as weddings, receptions and parties. The letter also refers to prior letters, dated October 17 and November 13, 1997, concerning the same issues. In your two earlier letters, in addition to discussing decorations for social events, you also refer to the usual florist's "delivery" and "installing" of arrangements, plants and other decorations for customer's homes, offices and other sites.

Your December 31, 1997 letter describes the specific charges about which you inquire as follows:

“LABOR CHARGES.... These labor charges are stated separately in the billing process and represent the following:

- Our labor costs associated with the installation of materials, props and decorations (premanufactured by an entity separate from our company) which we have rented, taken to the event site, installed and when the event is over, returned to the third party from which we rented. An example of this is the rental of an arch which is then transported to the site of a wedding reception and fastened to an existing deck or patio with bolts, screws or nails. Upon completion of the event, the arch is then detached and returned to the third party.
- Consulting fees associated with providing proposals and plans for events and interfacing with other vendors on a joint event.
- Labor charges assessed DO NOT represent the cost of labor involved in making floral arrangements in our shop....

“DELIVERY CHARGES - Delivery charges for the transporting of merchandise are assessed on all orders requiring delivery. All four criteria published by the State Board of Equalization regarding Nontaxable Delivery Charges (Tax Information Bulletin; September 1994; Paragraph 7; attached) are met when assessing these charges.”

From the above and a review of your two earlier letters, I understand the facts as follows. As a florist, S--- performs the usual florist activities of making, selling and delivering floral and plant arrangements, as well as, indoor trees and similar products. Charges for the labor involved in making any of these items are not claimed by S--- as nontaxable. Charges for “installing” its floral products at the customer’s site, *and* “delivery charges” are claimed on line 6 of S---’s sales and use tax returns as “nontaxable labor.” As to delivery charges, you indicate your belief that S--- complies with four criteria stated in the Board’s September 1994 Tax Information Bulletin: (1) the amount of the delivery charge is separately stated on the customer invoice; (2) the charge for delivery is either from S---’s place of business, or the place where the property is located, directly to the customer; (3) S--- either delivers itself (with title passing to the purchaser before the delivery occurs), or by common carrier; and (4) the amount of the delivery charge excluded from tax does not exceed the actual cost to S--- of the delivery.

In addition to the usual florist activities, S--- also plans and provides decorations for S--- social events. This involves presenting various decorating proposals and plans to customers for approval, executing the approved plans, and coordinating with other providers who may be hired to assist with the events. In the course of providing the S--- event decorations, S--- may create floral arrangements at its shop for the event, but charges for the labor involved in making these arrangements are not claimed by S--- as nontaxable. S--- may also rent from third party entities, items to use as decorations for an event, such as an arch.

S--- transports the S--- event decorations to the event site, installs them, and upon completion of the event, removes and returns any items which are rented from third parties. S--- separately states its charges for (1) planning the decorations and coordinating with other persons who assist with the event; and (2) installation and subsequent removal and return of the rented decorations to the third party rental entity. As to delivery charges, you indicate your belief that S--- complies with four criteria set out in the September 1994 Board Tax Information Bulletin: (1) separately states on its invoices to its customers, the amount of the delivery charges for transporting the decorations to the sites designated by the customers; (2) such charges are for delivery from S---'s place of business, or from the location of the decorations rented from a third party, directly to the customer-designated site; (3) S--- either delivers itself (with title passing to the purchaser before the delivery occurs) or by common carrier; and (4) the amount of the delivery charge does not exceed the actual cost of the delivery to S---.

Your letters neither discuss nor request advice concerning the charges made to your customers for the use of the items which you rent from third parties. However, I note that it is possible, based upon the few facts which you indicate concerning these items, that the use of the items by your customers as decorations may be taxable leases under the Sales and Use Tax Law. For your information, I enclose a copy of Regulation 1660 and the Board's Pamphlet Number 46 which discuss leases of tangible personal property and the instances in which tax applies to them. Please review these and if you have any questions concerning their application to your business activities, please write to us again describing in detail the transactions about which you have concerns.

Discussion

Retail sales of tangible personal property in California are subject to sales tax measured by the retailer's gross receipts, unless the sales are specifically exempted or excluded by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) Leases (including rentals and hires) of tangible personal property in any manner or by any means whatsoever, for consideration (usually in the form of money), generally are deemed sales, unless they are for property which is leased in substantially the same form as acquired by the lessor, as to which the lessor has paid sales tax reimbursement or use tax measured by the purchase price of the property. (Rev. & Tax. Code §§ 6006(g), 6006.3; Reg. 1660.)

Taxable gross receipts from a retail sale of tangible personal property include the total amount of the sale price including the materials used, labor or service charges, or any other expenses related to the sale of the property. (Rev. & Tax. Code § 6012.) In other words, as you appear to know, when a retailer makes a sale of tangible personal property, such as a floral arrangement, the retailer cannot deduct from the taxable gross receipts any charges for the materials used to make the property, any charges for labor used to make the property, any

charges for services related to the sale of the property or any other overhead expenses related to the sale of the property. However, taxable gross receipts do *not* include amounts charged for labor or services in installing the property sold, *nor* do they include certain transportation or delivery charges, as will be discussed in more detail later. (Rev. & Tax. Code 6012(c)(3) & (7).)

Tax also applies to any charges for producing, fabricating or processing tangible personal property, whether the property is furnished by the fabricator or the customer. (Reg. 1526(a), Rev. & Tax. Code § 6006.) Regulation 1526 describes the producing, fabricating or processing of tangible personal property to “include any operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property.” Thus, for example, charges for labor by S--- at the customer’s event site to create or add to a flower arrangement or other decoration, e.g., decorating a premanufactured arch with flowers, are subject to tax as steps in the making of the final product. Furthermore, even if the customer owned the flowers which were arranged, or the arch which was decorated, the charges for the labor would be subject to tax because by making or adding to the arrangement or decoration S--- is fabricating tangible personal property for the customer, that is, the arrangement or other decoration.

The charge for a service which is related to or part of a taxable sale of tangible personal property is also subject to tax. (Rev. & Tax. Code § 6012.) If S--- sells no property to the customer and performs no taxable fabrication labor for the customer, then charges for decorating are not subject to sales tax because the decorating services are not part of a sale of tangible personal property. However, if S--- does sell property to its customer or performs taxable fabrication labor for its customer, decorating services performed in conjunction with the sale or fabrication are services which are part of the sale of tangible personal property. (Reg. 1501.) In such circumstances, S---’s charges for decorating services are subject to sales tax. (Rev. & Tax. Code §§ 6012(b)(1), 6051.) For example, if S--- plans the decorative scheme, and designs decorations for a wedding reception and then sells the decorative items to, or fabricates them for, its customer, the planning and design services are generally considered to be related to the sale of the decorations and, therefore, are subject to tax.

Nonetheless, when S--- makes a taxable sale of tangible personal property, charges for installing that property are not subject to tax. (Rev. & Tax. Code § 6012(c)(3).) Installing does not mean deciding where to place the property, it means the physical act of affixing or placing the property in position. For example, if S--- sells a customer a wreath or garland, the charges for the wreath or garland (including the fabrication labor) are subject to tax, but a charge for actually hanging the wreath or garland is nontaxable installation labor. To use the example from your letter, charges for the installation of an arch by fastening it to a deck with nails or screws are not subject to tax. Please note, however, charges for the removal and return of decorations are *not* includible in nontaxable installation charges.

As stated earlier, certain transportation or delivery charges are not subject to tax. If the transportation is by other than facilities of the retailer, i.e., by United States Mail, independent contract or common carrier, tax does not apply to separately stated charges for transportation of property from the retailer's place of business or from another point from which shipment or delivery is made directly to the purchaser, unless the property is sold for a delivered price. "Separately stated" means that the charges are separately set forth in the contract for sale or in a document reflecting that contract, issued contemporaneously with the sale, such as the retailer's invoice. (Reg. 1628(a).) "Delivered price" is when property is sold for a price agreed upon in the contract for sale which includes *whatever* cost or charge may be made for transportation of the property directly to the purchaser. Property is not sold for a delivered price when any increase or decrease in the actual cost of transportation is to be borne by the purchaser. (Reg. 1628(b)(1).) (A copy of Regulation 1628 "Transportation Charges" is enclosed for your information.)

When transportation is by facilities of the retailer, such as by a florist's own truck, or the property is sold for a delivered price, tax applies to charges for transportation to the purchaser, unless (1) the transportation charges are separately stated, (2) are for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, and (3) the transportation occurs after the sale of the property is made to the purchaser. (Reg. 1628(b)(2).) A sale of the property is made to the purchaser when the retailer completes his performance with reference to the physical delivery of the property, *unless* an explicit written agreement provides that title to the property passes to the purchaser at an earlier time. (Reg. 1628(B)(3)(D).) Absent such an explicit agreement, when delivery is by facilities of the retailer, the retailer completes physical delivery (and, thus, the sale) of the property upon delivery to the purchaser at destination. Thus, when S--- delivers in its own truck, title does not pass to S---'s customer until the property physically reaches the purchaser's site *unless* S--- has a written agreement with the customer, which is executed prior to the delivery, stating that title to the property is to pass at some other time.

In summary, charges for the sale of tangible personal property, such as flower arrangements and other decorative items, are subject to tax, as are charges for making or fabricating flower arrangements and other decorations. Charges for services such as visits to the event site, consultations with the customer, designing and deciding where to place the flower arrangements and decorations, and other services provided by S--- which are related to the sale of tangible personal property are all services which are taxable as part of the sale of that tangible personal property. The final affixation or placement of the flowers and other items is nontaxable installation labor. Separately stated charges for delivery by facilities other than those of the retailer generally are not subject to tax. However, charges for delivery by S---'s own vehicles are subject to tax unless the title to the delivered items passes to the purchaser by explicit written agreement prior to delivery.

Nontaxable installation charges should be reported on your sales and use tax return on line 6 "nontaxable labor." Delivery charges which are not subject to tax should be reported on line 10(f) with the notation "nontaxable delivery charges."

I hope this information is helpful. Should you have any further questions, please feel free to write again.

Sincerely,

Sharon Jarvis
Senior Tax Counsel

SJ:sr

Encs.: Regulations 1628 & 1660; Pamphlet No. 46.

cc: Van Nuys District Administrator - AC
Jane M. Burgoon (MIC: 35)