

M e m o r a n d u m**280.1096**

To : Mr. Dennis Fox, Supervisor
Audit Evaluation and Planning Section, MIC:40

Date: September 26, 1995

From : Patricia Hart Jorgensen
Senior Staff Counsel

Subject: Industry Notice to the C--- & R--- I---

This is in response to your memorandum dated June 22, 1995, in which you requested approval of an attached draft letter to the C--- and R--- I--- (CRI), formerly known as C--- M--- of the W--- (CMAW), regarding rug samples provided to out-of-state dealers.

Your draft letter attempts to correct inaccurate language contained in a booklet prepared by CMAW entitled "CMAW Guidelines for Effective Compliance with California Sales and Use Tax Regulations for the Carpet Industry". It is my understanding that the "inaccurate" language had previously been approved by Board personnel. The intent of the draft letter is to clarify the application with respect to samples and marketing aids provided to out-of-state dealers.

Upon review of this matter, it has become apparent that the underlying problem is that the term "sample" has been used in reference to both: area rugs or carpets, formerly held for demonstration and display, which are subsequently sold to customers; and marketing aids which generally are composed of carpet remnants bound together to form a swatchbook. The term "sample" should be used only for the former and not the latter.

This underlying confusion over the term "sample" is addressed in Article 11 of the September 1995 issue of the Board's "Tax Information Bulletin." It is my suggestion that a revised copy of this article entitled, "Taxability of Carpet Samples" be sent to the CRI representative. The suggested modification is to rewrite the portion of the article with the sub heading "*Marketing Aids*" as follows:

Marketing Aids. The carpet samples discussed above are different from marketing aids, which are not normally sold to customers. For example, carpet remnants that are bound together to form swatch books are generally regarded by the Board to be marketing aids, and the rules explained in Regulation 1670 apply. Thus, a person such as a manufacturer or wholesaler is the consumer of a swatch book the person transfers for less than 50 percent of that person's purchase price

(for the manufacturer, the purchase price is generally the purchase price of the materials it incorporates into the marketing aid). A person is a seller of marketing aids it transfers for 50 percent or more of that person's purchase price.

When a person sells a marketing aid, that is, transfers it for 50 percent or more of purchase price, its sale is a retail sale. (The exception would be when the purchaser will in turn transfer the marketing aid prior to any use for 50 percent or more of purchase price.) That retail sale is subject to tax unless otherwise exempt (e.g., a sale qualifying as an exempt sale in interstate commerce under Revenue and Taxation Code section 6396).

When a person consumes a marketing aid, that is, transfers it for less than 50 percent of purchase price, and the consumption is in California, the person owes use tax on its purchase price of the marketing aid unless the person had already paid tax or tax reimbursement on purchase price. When a person consumes a marketing aid by sending it to the recipient by U. S. Mail or by common carrier, the person consumes the marketing aid at the time and place the marketing aid is delivered to the Postal Service or common carrier for shipment to the recipient. For example, if a manufacturer delivers such a marketing aid to a common carrier in California for shipment to a person in another state, the manufacturer consumes the marketing aid in California. It is irrelevant that the marketing aid will thereafter be sent outside this state. The exemption for sales in interstate commerce does not apply because the manufacturer is consuming the marketing aid in California, not selling it in interstate commerce.

If you have any further questions please feel free to contact me again.

PHJ:cl

cc: Mr. Glenn A. Bystrom
Mr. Larry Isbell