


STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
 450 N STREET, SACRAMENTO, CALIFORNIA
 (P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
 (916) 324-2634

MEMBER
 First District

BRAD SHERMAN
 Second District, Los Angeles

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

MATTHEW K. FONG
 Fourth District, Los Angeles

GRAY DAVIS
 Controller, Sacramento

July 6, 1994

J--- Y, P---
 XXXX --- Blvd., Suite XXX
 --- ---, CA XXXXX

BURTON W. OLIVER
 Executive Director

**Re: The R--- B--- H--- Corp.,
 L--- P--- F---
 SR -- XX-XXXXXX**

Dear Mr. P---:

In recent correspondence, you wrote to the Board's Return Review Section on behalf of the above-named client (the Company) to explain the deduction claimed for "decoration service" on the Company's third quarter 1993 Sales and Use Tax Return. You explained that Mr. K--- L---, an employee and officer of the Company, is a well-known specialist in floral decoration and designs who does wedding and party decorations, using flowers and accessory items in doing so. You stated that "[e]ven though Mr. L---e uses flowers and accessory items in his service its net cost would [have] been less than 20% of total billing amount." You also explained that Mr. L--- now bills the Company's customers separately for flowers and labor. He bills a "retail price" for flowers, and separately charges for labor based on his "time schedule." (1/6/94 letter.)

The Board's Return Review Section responded to your letter, indicating in part that more information was needed, and you wrote back explaining:

"Mr. L--- upon accepting a decoration service order first visits the location then consult layouts and types of flowers and accessory items with customer. Often he has to rent special machines such as smog machine or ice machines to produce a spectacular, a motion picture type, affects to its service. This types of service made Mr. L--- famous in decoration service field. When I heard what Mr. L--- provides to his customer along with sale of flowers, I believed that there got to be same way to distinct sale of flowers from sale of his expertise service. I even thought his service is more likely entertainment rather than decoration....

"We are disagreeing on your findings about taxability of Mr. L---'s decoration service base on fact 1) Mr. L--- has charged his customers for flowers at the 'retail' price, his cost plus a reasonable mark up separate from his service fee, 2)

if Mr. L---'s service is not decoration service it should be classified as 'installation labor' since his service does not alter or fabricate its flowers and accessories but merely installing them at the service location...." (3/8/94 letter.)

From the description in your two letters I understand that the Company decorates for its customers' parties and other events based upon layouts and designs by Mr. L--- and utilizing flowers, accessory items, and special effects such as fog generated by rented equipment. You do not indicate whether the "accessory items" are sold to the customer as part of the charge for the flowers (such as receptacles which hold the flowers or items of decor which are incorporated in the flower arrangements) or are only made available by the Company to the customer to be used temporarily at the event with the cost of such use included in the "labor" charge as an overhead expense. You do indicate that Mr. L--- sometimes rents machines to create special effects. I assume that the Company does not rent these machines to its customers, but, rather, passes the Company's rental costs on to its customers as an overhead expense in its charges to the customers.

Discussion

Retail sales of tangible personal property in California are subject to sales tax measured by the retailer's gross receipts, except for sales specifically exempted by statute. (Rev. & Tax. Code § 6051.) 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, when a retailer makes a sale of tangible personal property, 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.

All charges for tangible personal property which the Company sells, such as flowers and accessory items, are subject to sales tax. (Rev. & Tax. Code § 6051.) The cost of all steps in the making of any tangible personal property sold are part of its taxable sale price, including materials and labor, whether separately stated or not. Thus, the cost of the materials used and the labor to design and make a flower arrangement or other decoration are all includible in the taxable sale price of the flower arrangement or decoration, including any planning charges.

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 the Company at the customer's event site to create a flower arrangement or other decoration are subject to tax as steps in the making of the final product. Furthermore, even if the customer owned the flowers which were arranged, the charges for the labor would be

subject to tax because by making the arrangement or decoration the Company 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 the Company 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, when the Company sells property to its customer or performs taxable fabrication labor for its customer, decorating services performed in conjunction with that sale are services which are part of the sale of tangible personal property. (Reg. 1501.) As such, the Company's charges for decorating services are subject to sales tax. (Rev. & Tax. Code §§ 6012(b)(1), 6051.) For example, if Mr. L--- plans the decorative scheme layout and designs decorations for a party, those services are considered to be related to the sale of the flowers and decorations and, therefore, are subject to tax.

Nonetheless, when the Company 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 the Company 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.

In summary, charges for the sale of tangible personal property such as flowers and accessory 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, design, layout, rental by the Company of equipment, decisions of where to place the flower arrangements and decorations, and other services provided by Mr. L--- 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.

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

Sincerely,

Sharon Jarvis
Staff Counsel

SJ:es

J--- Y. P---

-4-

July 6, 1994
295.0235

cc: AS - District Administrator