

**STATE BOARD OF EQUALIZATION**

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April 11, 1978

Mr. R--- S. C---
K---, P---, W---
Q--- & R---
XXX West --- St., XXrd Flr.
--- ---, CA XXXXX

Re: R--- C--- & Associates
SR -- XX-XXXXXX

Dear Mr. C---:

Your letter of February 27, 1978, addressed to Eugene Louie Auditor of the State Board of Equalization has been referred to this office for review and recommendation.

It is apparent that at the very least there has been a serious error in communication in that the taxes are not being applied correctly by your client R--- C--- & Associates. In this connection, it is helpful to review the guidelines for application of the tax to interior designers and decorators as set forth in Pamphlet No. 35 published by the Board in June 1977. It reads as follows:

How you bill your clients to recover costs and earn a profit is strictly a matter between you and your customer. Many designers and decorators charge a fee which may be a negotiated amount or a percentage of the selling price of furnishings, labor, or professional services.

Fees for bona fide professional services such as consultation, layout, coordination of furniture and fabrics, selection of color schemes, and supervision of painting, installations, etc., are exempt. Billings for such exempt fees should be separately stated from fees related to sales of tangible personal property.

Fees charged in connection with acquiring and providing furnishings or other tangible personal property are taxable. A fee charged solely for accompanying a client to showrooms, or for otherwise assisting in or recommending the selection of furnishings, is considered part of the taxable selling price of the furnishings sold by you, not an exempt decorator fee. However, tax does not apply to charges

for such services when no sales of merchandise are made. Normally, the selling price of the furnishings on which you compute tax should be the "retail" price, that is, your cost plus a reasonable markup.

If furnishings or other kinds of tangible personal property are billed at cost and a separately stated fee charge includes overhead, profit, etc., directly related to the property sold, as well as other charges, the total fee charged will be considered subject to tax, unless it is established that a portion of the fee is for exempt professional services as described above.

This release points up that the professional services of the decorator, which are independent of the sale of tangible personal property, such as consultation, layout, coordination of furniture and fabrics, selection of color schemes, supervision of painting, installations, etc., are not regarded as services as part of the sale of tangible personal property and therefore exempt from the tax. It also recognizes that the matter of the sales price of the property is essentially a matter of contract between the interior decorator and his client.

On the other hand, it is explained that the amount charged for services provided in connection with the furnishing of the property such as overhead and other cost incurred by the retailer in obtaining the property are a part of the gross receipts from the sale. This latter application is based on the provisions of Revenue and Taxation Code Section 6012 which defines gross receipts to include the entire sales price without deduction for:

(a)(2) The cost of the materials used, labor or service cost, interest paid, losses, or other expense. (Emphasis added.)

and further provides that the sale or rental price includes:

(b)(1) Any services that are a part of the sale.

It should be noted that the cost incurred by the decorator is not necessarily "the same price paid by the decorator for such items." The law and authorized rules and regulations do not authorize the exclusion of reimbursement for these services from the measure of tax merely because the seller is an interior decorator nor would the tax consequences be altered by merely describing the reimbursement for these costs as a "design fee."

Additionally, the charge for the services of designing custom furniture are not excludable in any event. These services are part of the cost and expense of producing the property and are includable in gross receipts under the above quoted provisions of Section 6012. With regard to these types of services, your letter of February 27, 1978 recites as follows:

Much of the furniture and furnishings installed by Mr. C--- on his jobs are designed by the especially manufactured for him. In my particular case, more than fifty percent (50%) of the furniture and furnishings installed on the job were

designed by Mr. C--- and manufactured pursuant to his plans and specifications. In fact, neither I nor Mrs. Co--- ever accompanied Mr. C--- when he was selecting our furnishings, furniture or backgrounds.

In view of your prior contact and the apparent error in communication, we will not assert any deficiency for reimbursement relating to overhead and other costs incurred by the decorator in obtaining the furniture. However, there is no indication that the application of tax to charges for designing furniture to the specifications of the customer was ever discussed or ruled on by this office.

I have discussed the prior contact with Mr. Rigby and he does not have any present recollection with respect to the claims made in your letter. However, we are quite confident that he would not have issued a ruling exempting these types of services.

We have instructed the field audit staff to revise the current audit in accordance with the view expressed herein. If your client does not concur with the revised audit, he may elect to file a petition for redetermination in the manner and form provided by Revenue and Taxation Code Section 6561, et seq.

Sincerely,

W. E. Burkett
Tax Counsel

WEB:po