

**STATE BOARD OF EQUALIZATION**

(916) 322-3400

April 18, 1966

Ms. L--- B---
D--- M---, Inc.
XXX --- ---
--- ---, CA XXXXX

RE: SR -- XX-XXXXXX

Dear Ms. B---:

I am writing in response to your October 9, 1990 letter requesting legal advice regarding the applicability of tax to the sale of a "metal exhibit" by D---M---, Inc. (D---).

The facts, as I understand them, are as follows. D--- custom fabricated a metal exhibit for B--- I---, Inc. (B---), a Pennsylvania Corporation. The exhibit was designed by I---, a California firm.

The selling price of the property is \$14,330.00. D--- did not include sales tax reimbursement on its invoice to B---, because the property was to be shipped directly out-of-state. However, the purchaser later requested that D--- ship the unfinished product to I---, which "completed the work by adding electrical components to the unit." I--- then shipped the exhibit out-of-state.

Unless specifically excluded or exempted from taxation by statute, all gross receipts from retail sales or purchases for use within this state of tangible personal property are subject to either sales or use tax. (Rev. & Tax. Code § 6051.) Although the legal obligation to pay sales tax is on the retailer, Civil Code Section 1656.1 provides that the retailer may seek sales tax reimbursement from the purchaser. A "sale" is defined as including a "transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer" (Rev. & Tax. Code § 6006(f)).

If D--- had sent the property directly out-of-state via common carrier, as originally planned, there would have been no sale in this state and no sales tax owing. Since, however, the property was instead delivered in this state per the purchaser's instructions, the sale took place in California and is subject to tax. D--- has the legal duty to report and pay the tax on this sale to the Board of Equalization. Whether B--- owes sales tax reimbursement to D--- is a matter of agreement between the two corporations.

Please feel free to contact us again if you have further questions.

Sincerely,

Stella Levy
Tax Counsel

SL:cs