

**STATE BOARD OF EQUALIZATION**

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February 27, 1991

Ms. C--- R. O---
B--- I--- Group
XXXX XXth Street
---, CA XXXXX

SR – XX-XXXXXXX

Dear Ms. O---:

This is reply to your December 3, 1990 letter regarding the application of sales tax to your sales of office furniture. Specifically, you asked for the application of tax to the following:

- “1. In-bound interstate freight charges from office furniture manufacturers shipping a) directly to customer, b) shipping into our subcontractor’s warehouse for later delivery
- “2. In-bound intrastate freight charges from office furniture manufacturers shipping a) directly to customer, b) shipping into our subcontractor’s warehouse for later delivery”

Revenue and Taxation Code section 6012 defines “gross receipts,” the amount upon which sales tax is computed, to include the cost of transportation of property except:

“Separately stated charges for transportation from the retailer’s place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer; provided, that if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the sale of the property is made to the purchaser.”

See Revenue and Taxation Code section 6012, subdivision (c)(7). Enclosed is a copy of Sales and Use Tax Regulation 1628, Transportation Charges, for your further information.

The application of tax to the transportation charges is the same whether the freight is interstate or intrastate. We assume that the in-bound freight to which you refer is by other than your facilities. Charges for freight into your subcontractor's warehouse are includable in the taxable gross receipts of your sale because such transportation is not "directly to the purchaser" as required by section 6012. You may exclude from the taxable gross receipts your separately state charges for freight directly to your customer, but the exclusion cannot exceed your cost of the freight. Also, if you sell the property for a delivered price, the exclusion is only applicable as to transportation which occurs after your sale of the property. See Regulation 1628, subdivision (b), for the application of tax to charges for transportation of property sold for a delivered price.

"3. Office furniture manufacturers are shipping more and more of their product in a 'knocked down' condition cartoned. We must assemble the furniture a) in our warehouse before delivery in a 'set-up' condition or b) assembled on the customer's premises. Is assembly labor taxable?"

Yes, subdivision (a)(2) of section 6012 defines "gross receipts" to include labor or service cost, and any other expense. Assemble labor is a step in the series of operations resulting in the production of tangible personal property. Charges for assembly labor are included in the taxable gross receipts of a retail sale.

"4. Local 'will-call' orders from wholesale distributors of steel product i.e., lockers, industrial steel shelving, bookcases, etc. picked up at distributors warehouses in a 'knocked down' condition, delivered by our subcontractors to our customers offices and assembled and installed and may times anchored into the floor or wall to meet seismic title conditions. Is there tax on this labor and/or the actual delivery charges?"

As noted above, tax applies to your charge for assembly labor. Tax does not apply to your charge for labor to install the tangible personal property sold. (Rev. & Tax. Code § 6012, subd. (c)(3).) Tax does not apply to your separately stated charges for the delivery by your subcontractors from the distributor's warehouse to your customer's office provided you do not sell the property for a "delivered price" except as provided at subdivision (b)(2) of Regulation 1628.

"5. Office furniture partitions which interconnect with on another providing electrical conduit through the raceway of the furniture are a) received directly at customer's, jobsite b) received at subcontractor installers warehouse

Is the erection and assembly of the furniture panel systems taxable? Please note in some cases wall anchoring is recommended for stability. However, the furniture becomes free-

standing and is portable and may be moved to other locations and reassembled.”

The charge for erection and assembly is taxable. The charge for installing the property is excluded from the measure of tax.

“6. Are there any private or public business that are tax-exempt? And exempt from which particular taxes?”

Sales to the United States and its unincorporated agencies and instrumentalities are exempt from sales tax. Enclosed is a copy of Sales and Use Tax Regulation 1614, Sales to the United States and Its Instrumentalities, for your further information.

“7. Office furniture panel systems many times are reconfigured. Is the subcontracted installation labor to perform this reconfiguration taxable?”

Although a charge for assembly labor is taxable, charges for labor to repair or recondition tangible personal property to refit it for the use for which it was originally produced are not subject to tax. (Sales and Use Tax Reg. 1526, subd. (d).) Assuming that your labor to reconfigure the office furniture panel systems does not result in the creation of tangible personal property but merely reconditions the panel systems for the use for which they were originally produced, tax does not apply to your charge for the labor to reconfigure the furniture. In order for us to give you a definitive answer, however, we would need a complete description of the panel system and what reconfiguration labor you perform.

“8. If we receive our customer’s furniture in our own warehouse and set-up and deliver the furniture with our own employees in our own company owned vehicles is tax charged on delivery and is tax charged on installation of knocked-down furniture versus using subcontracted labor and installers?”

The charge for delivery to your warehouse is included in the taxable gross receipts of your sale. When you deliver furniture by your own facilities, tax applies to your charge for delivery unless all three of the following conditions are satisfied:

1. You separately state the delivery charges;
2. The transportation is from your place of business or other point from which shipment is made directly to the purchaser; and
3. The transportation occurs after your sale of the property to the purchaser.

We note that, when you deliver the property by your own facilities, title passes to the customer when you deliver the property at the destination unless there is an explicit written

agreement executed prior to the delivery, that title is to pass at some other time. See Sales and Use Tax Regulation 1628 at subdivisions (b)(2) and (b)(3)(D). The charge for actual installation is nontaxable whether your employees or subcontractors perform the installation. However, charges for assembly of knocked down furniture are taxable.

“9. If a customer hires us to change the drawers in existing furniture from one side of a desk to another or change the return from one side of a desk to another or move the modesty panels from in front of a desk or return is this labor whether it is with our own personnel or subcontracted personnel taxable?”

The reconditioning or repair labor is nontaxable whether your employees or subcontractors perform the labor.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

Encs.

bc: --- District Administrator