

**STATE BOARD OF EQUALIZATION**

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Executive Director

October 28, 1996

Ms. C--- W---
XXXX --- Avenue
---, CA XXXXX

Re: Detailed Drawings and Wax Models of Jewelry Designs

Dear Ms. W---:

This is in response to your letter dated September 14, 1996 regarding the application of sales tax to work you may undertake. You state:

“The following are brief descriptions of the two types of jobs I may do...

“1) A jeweler would pay me to do detailed drawings of jewelry that he plans to sell to a customer. The purpose of the drawings is to give a customer an accurate idea of what the finished piece would look like, so he may decide whether or not he would like to purchase it. (If he wants it, the jeweler will then make the piece.)

“Do my legal responsibilities change depending on whether or not I design the jewelry myself, or just draw the jeweler’s idea, or some of both?

“2) A jeweler would pay me for my labour to make a wax model of a piece of jewelry. This wax piece is used in the actual process of making the final piece of metal jewelry. (This is known as the “lost wax” method.)

“The cost of my labour would be included in the price of the finished piece of jewelry on which the final consumer pays sales tax.

“In either of these two cases do I need a seller’s permit? And if I do, am I supposed to just give the jeweler my resale number, or do I need to collect the tax myself?”

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. Although the sales tax is imposed on the retailer, the retailer may collect sales tax reimbursement from the purchaser if the

contract of sale so provides. (Civ. Code § 1656.1.) Taxable gross receipts generally include all amounts received with respect to the sale, with no deduction for the cost of materials, service, or expense of the retailer passed on to the purchaser, unless there is a specific statutory exclusion. (Rev. & Tax. Code § 6012.)

On the other hand, the providing of a service which is unrelated to the sale of tangible personal property is not subject to sales or use tax. Whether a particular transaction involves a sale of tangible personal property or involves the transfer of tangible personal property which is incidental to the performance of a service depends upon the true object of the contract. That is, the question is whether the true object of the customer was to obtain the service per se or the property produced by the service. If the true object is the service per se, the transaction is not subject to tax even though some tangible personal property is transferred. If the true object of the customer was to obtain property produced by the service, tax applies. (Reg. 1501.)

We assume that you are neither an employee nor an agent of the jeweler, but that you are an independent contractor. We also assume that the jeweler retains title to the detailed drawings and wax models, upon payment to you of an agreed upon price. In other words, the detailed drawings and wax models are the exclusive property of the jeweler upon the jeweler's payment to you.

We understand that the jeweler will use your detailed drawings as a visual aid for customers. The detailed drawings will show what a piece of jewelry will actually look like, and assist a customer in deciding whether to purchase the piece of jewelry. If you design the jewelry and provide a detailed drawing of your design to the jeweler, we would regard the true object of the contract to be one for tangible personal property. Although you would be selling your design idea, the jeweler desires the detailed drawing itself, that is, the physical drawing that exhibits your idea. Therefore, the true object of the contract is the detailed drawing. We would reach the same conclusion if you provided a detailed drawing of the jeweler's ideas, or provided a detailed drawing incorporating some of your ideas with the jeweler's ideas. Since the jeweler purchases the drawing as a visual aid for customers, the true object of the contract is the detailed drawing itself. As such, we would regard the transaction as a sale of tangible personal property. Tax applies to the gross receipts from furnishing the detailed drawings, without any deduction on account of the work, labor, skill, thought, time spent, or other expense of producing the detailed drawings.

With respect to the wax models you would make, we understand that the jeweler would use the wax models in the process of making the final piece of jewelry. We therefore regard the true object of the contract to be the sale of tangible personal property. The jeweler desires the wax model for the purpose of producing the final piece of jewelry. The true object of the contract between you and the jeweler is the wax model itself. Therefore, tax applies to the gross receipts from the sale of the wax model, without any deduction on account of the work, labor, skill, thought, time spent, or other expense of producing the wax model.

You state that the cost of your labor for the wax model would be included in the finished piece of jewelry. We understand this to mean that the jeweler will pass on the cost of the wax

model to the purchaser of the jewelry, and include this cost in the sales price. Sales tax applies to the sale of tangible personal property to persons who purchase it for use in producing tangible personal property, and not for the purpose of physically incorporating it into the article sold. (Reg. 1525.) In addition, sales tax applies to the gross receipts from retail sales by manufacturers of tangible personal property. (Reg. 1524.) The measure of tax is the gross receipts of, or sales price charged by, the manufacturer. (Id.) As previously discussed, gross receipts includes the cost of the materials used, labor or service cost or any other expense. (See Rev. & Tax. Code § 6012(a)(2).) The fact that the jeweler will pass on the cost of the wax model to the purchaser of the jewelry in the sales price, does not alter the fact that you are making a retail sale of tangible personal property to the jeweler. The wax model will not be physically incorporated into a piece of jewelry; rather, the wax model will be used to produce the piece of jewelry. Accordingly, sales tax applies to the sale of the wax model.

In summary, we regard you as a retailer because the true object of the contract between you and the jeweler are the detailed drawings and the wax models. The drawings and wax models are tangible personal property. As such, sales tax applies to the transfer of both the detailed drawings and the wax models to the jeweler.

Since you will be making sales of tangible personal property, you are required to hold a seller's permit. (Rev. & Tax. Code § 6066.) You ask whether you should give the jeweler your "resale number," which we assume to mean the seller's permit number. In complying with your sales tax obligation, you may not merely provide your seller's permit number to the jeweler. You will be required to pay sales tax to the board, measured by your gross receipts, and you may collect sales tax reimbursement from the jeweler if the contract of sale so provides (usually itemized as "sales tax" on the invoice).

This opinion is specifically based on the facts stated in your letter and the assumptions made above. If our assumptions are incorrect, for example, if you are an employee of the jeweler, this opinion does not apply. If such is the case and you wish an opinion applicable to the actual facts of the transactions, please write again and describe with specificity the nature of the transactions.

Very truly yours,

Charlotte Chyr
Tax Counsel

CC:cl

cc: Oakland District Administrator