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February 28, 1997

Ms. D--- D--- - P---
 C--- C--- P---
 XXX East --- Avenue
 ---, CA XXXXX

Re: C--- C--- P---
SR -- XX-XXXXXX

Dear Ms. D--- - P---:

This is in response to your letter dated January 8, 1997 regarding the taxability of transportation charges on sales of furniture that C--- C--- P--- ("CCP") designs and sells. You state:

"We are an interior design firm, a large part of our business being the sale of custom furniture manufactured in several states including California. All furniture is delivered via common carrier to a local common carrier who delivers the goods to our clients. [The carriers picking up at the point of origin will deliver only to a receiver/carrier, therefore a local carrier is needed to complete the delivery.] The furnishings never come to our office as it is a design studio only. The actual freight costs are billed to the client.

"Our question is whether or not the freight is taxable."

California imposes a sales tax on retailers, measured by gross receipts, for retail sales of tangible personal property in this state. (Rev. & Tax. Code § 6051.) Revenue and Taxation Code section 6201 imposes a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state, measured by the sales price. "Gross receipts" and "sales price" mean the total amount of the sale without any deduction on account of the cost of materials used, labor or service cost, or the cost of transportation of the property, unless an exclusion applies. (Rev. & Tax. Code §§6011, 6012.)

Tax does not apply to "separately stated" charges for transportation of tangible personal property from the retailer's place of business, or other point from which shipment is made "directly to the purchaser," provided the transportation is by other than facilities of the retailer, such as by United States mail, independent contract or common carrier and provided the property is not sold for a "delivered price." (Rev. & Tax. Code §§ 6011, 6012; Reg. 1628(a).)

Transportation charges are separately stated only if they are separately set forth in the contract for sale or in a document reflecting that contract, issued contemporaneously with the sale, such as the retailer's invoice. (Reg. 1628(a).) Property is not delivered "directly to the purchaser" if it is shipped to the retailer, the retailer's agent or representative, or to anyone else acting on the retailer's behalf. (Id.) Any separately stated charges by the retailer for the transportation of property to, rather than from, the retailer's place of business, or to another point from which the property will then be "delivered directly to the purchaser," are included in the measure of tax. (Id.) Such charges represent incoming freight and are taxable as part of the cost of the property sold by the retailer. (Id.) Only the actual cost to the retailer of the transportation is excluded. (Reg. 1628(a).) To be entitled to the exclusion, the retailer must retain records showing the actual cost of transportation for each transaction (BTLG Annot. 557.0005 (7/24/91).)

We assume that the sales about which you ask are for delivery to customers in this state. We understand that when CCP sells custom furniture to its customers, CCP contracts with third parties to manufacture and ship the furniture. The application of tax depends on to whom the manufacturer delivers the furniture. If the manufacturer ships the furniture by common carrier to CCP in care of a local common carrier, and CCP then directs the local common carrier to deliver the furniture to the purchaser, then any separately stated charges for transportation from the manufacturer to CCP in care of the local common carrier are included in the measure of tax. That shipment is not "directly to the purchaser." Only separately stated charges for transportation of the property from the local common carrier, from which shipment is made "directly to the purchaser," are not taxable.

On the other hand, if the manufacturer ships the furniture by common carrier to the purchaser in care of the local common carrier, and the local common carrier then delivers the furniture to the purchaser, we would consider the property delivered "directly to the purchaser" notwithstanding the fact that more than one carrier may be used to complete the delivery to the purchaser. In such a case, tax does not apply to the separately stated transportation charges.

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

Very truly yours,

Charlotte Chyr
Tax Counsel

CC:cl

cc: --- District Administrator