

M e m o r a n d u m**435.0040**

To: Los Angeles – Dist. Prin. Aud. (JTQ)

July 25, 1967

From: Tax Counsel (EDM)

We regret our delay in replying to your memoranda of March 10 and July 6, 1967, in which you ask our opinion with respect to the application of the tax to a sale of furniture by the above-mentioned taxpayer to the "S" bank under the following circumstances:

We understand that the bank ordered certain furniture from taxpayer's out-of-state supplier. Under the terms of the contract of sale, the furniture (component parts) was to be shipped from a point outside of California to the bank's warehouse in this state; that title to said furniture was to pass to the bank outside this state; that seller was to assume all risk of loss or damage to goods until delivery to the bank. Upon arrival of the goods at the bank's warehouse, the seller (taxpayer) assembled the component parts into a completed item of furniture. No separate charge is made for such assembly labor. The furniture is apparently sold at a delivered price inasmuch as the contract of sale provides that:

“...the purchase price specified in this order constitutes the entire obligation of the buyer in connection therewith.”

Section 6006(b) of the Sales and Use Tax Law which is explained by sales and use tax Ruling 15, provides that tax applies to charges for producing, fabricating and processing of tangible personal property for consumers who furnish either directly or indirectly the materials used. “Producing”, “fabricating”, and “processing” include any operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property.

Applying the above principle to the present fact situation, it would appear that the assembly of the component parts into a finished piece of furniture constitutes steps in a series of operations resulting in the production of tangible personal property. Accordingly, we are of the opinion that the sales tax is applicable with respect to the taxpayer's labor charges for fabricating and assembling the customer-furnished furniture parts into a completed furniture item. Since title to the component parts passed to the purchaser-bank out of state, the bank would be furnishing materials to a retailer (taxpayer) for fabricating within the meaning of Section 6006(b), as explained in Ruling 15.

An allocation between the out-of-state transfer and sale of the furniture and the taxpayer's in-state fabrication labor charges should be made, with the tax applying only to the latter charges.

The above conclusion would not be altered by the fact that the taxpayer's assembling was done in its own warehouse rather than on the bank's premises.

EDM:fb [1b]

PRODUCING, FABRICATING, AND PROCESSING PROPERTY FURNISHED BY
CONSUMERS – GENERAL RULES – Regulation 1526

(a) Assembly, Disassembly, and Reassembly

Annotation 435.0040, Assembly of Furniture – Fabrication, etc.

Banks are subject to sales and use tax (see Annotation 135.0130). Therefore, the first part of the third sentence of this annotation will be amended so that the sentence reads as follows:

“The purchase price of the knocked-down furniture was subject to use tax, and the assembly of the parts was a step in a series of operations resulting in the production of tangible personal property.”

1/23/89