

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916)/ 445-6493

February 9, 1981

D--- S--- Corp.
XXXX West --- Blvd.
--- ---, CA XXXXX

Attention: Mr. D--- E. S---
Executive Vice President

Gentlemen:

Re: S--- IN-WALL BEDS - - Construction Contracts
Your Account No. SR -- XX XXXXXX

This is in response to your letter of December 24, 1980 to the Board's Legal Department, in which you request an opinion as to the application of tax on sales and installation, and information concerning proper billing and reporting methods.

We understand that your company is a distributor of S--- In-Wall Beds. You sell to customers who arrange for their own installation; you also furnish and install for other customers. We assume the latter is on a lump sum basis. You state that you "report the installed sales as self-consumption of personal property in the production of fixtures, subject to use tax measured by the cost of the property" to you.

You have been advised by the local office that the frame and box spring become realty when affixed to real property but that you should request an opinion as to whether the mattress itself also becomes a part of realty. You note that you purchase the box spring and mattress sets as a unit.

Based on your description and the accompanying color brochure (39536/SW 3-20-76 (Rev. 11/79)), the bed may be described as consisting of three basic parts -- a factory-assembled frame, a box spring, and a mattress.

The frame is made of vinyl-clad 16 gauge steel with 12- and 16- gauge steel cross-members riveted to it; a plywood subpanel attached to the bottom of it; a slanted, padded, movable but attached headboard, and a patented Power Pak system for raising and lowering the bed. The latter unit reduces hundreds of pounds of bed weight to a mere dozen-plus lowering/lifting pounds. The frame

may be purchased to accommodate any standard size double, single, or queen size box spring and mattress either owned by the purchaser, or furnished by the company. The frame is equipped with a plate at the head of the frame which is attached to the sub-flooring of the building.

The box spring is affixed by fitting it into slotted supports rising from the frame and fastening it with screws at the four corners so that it will not move when the frame is placed in an upright position.

The box spring has cloth straps permanently affixed in two or more places. The mattress is tied to the box spring by means of these cloth straps.

It is our opinion that a wall-bed frame and box spring constructed and installed as described above becomes an improvement to realty upon affixation to real property. Regulation 1521 (copy enclosed) governs the application of tax to such improvements. We concur with the district that the frame and box spring are fixtures within the meaning of subsection (a)(5) and Appendix B of the regulation.

The unaffixed mattress, however, bears more similarity to tangible personal property, i.e., furniture or furnishings, than to a component part of a fixture (see 1521(b)(3)). For that reason and because of its minimal attachment, we believe it should be classified as tangible personal property.

The measure of tax for the mattress under your lump sum contract to furnish and install the complete bed is the difference between your contract price for the three pieces installed (frame, box spring, and mattress) and your contract price for the two pieces furnished and installed (frame and box spring). If the mattress is sold separately, the measure of tax is the same as for any other tangible personal property, i.e., your gross receipts from the sale.

Under the regulation it is not accurate nor proper to “report the installed sales as self-consumption of personal property in the production of fixtures, subject to use tax measured by the cost of the property.” You are deemed to be a construction contractor under the regulation. As to fixtures furnished and installed, you are the retailer, not the consumer, and the applicable tax is a sales tax rather than a use tax (subsection (b)(2)(B)).

The measure of tax for fixtures, if your contract with your customer states your sale price, is the sale price. If your contract with your customer does not state the sale price of the fixture, your “sale price” is deemed to be the cost price of the fixture to you. (See “Measure of Tax” under (b)(2)(B)2.)

One final observation. We would not regard you as engaged “in the production of fixtures” under the regulation. When you affix the factory-assembled frame to the realty, then attach the box spring and mattress, you would be deemed to be performing nontaxable installation labor rather than producing or fabricating fixtures.

D--- S--- Corp.

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Enclosed is Pamphlet No. 9 which may be of assistance. Please do not hesitate to write the undersigned if you wish additional information or clarification.

Very truly yours,

Margaret R. Howard
Tax Counsel

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Enc.