

M e m o r a n d u m**210.0470**

To: Inglewood – Auditing (ECM)

Date: July 1, 1977

From: Headquarters – Legal (MHH)

Subject: REDACTED TEXT, Inc.

Your memorandum of May 13, 1977 states that you are now auditing the above firm, which is a manufacturer and distributor of women's apparel.

Our opinion is sought, based on these facts:

“The taxpayer purchases yardage goods, ex-tax, specifically for use in the designing and production of style samples. These samples are shown to buyers from major retail chains who order from the selection. All samples produced are eventually sold through the taxpayer's own retail outlets, which specialize in seconds. Our question is whether this procedure constitutes a use other than demonstration or display of goods held for sale in the regular course of business.”

The question of how samples should be treated has previously been considered by the Board's staff. The main criterion in determining whether imposition of the use tax is proper is neither the labeling of the items as “samples” nor the fact that sample items are ultimately sold at retail.

The main criterion is whether there has been an intervening use “other than retention, demonstration, and display while holding it for sale in the regular course of business” (Revenue and Taxation Code Section 6094).

Annotation 435.1440, 1/13/67, involved fabrication labor on “sample” garments, which was held to be taxable. The taxpayer made garments from customer-furnished yardage. Customer used the garments as samples for the purpose of preparing patterns from them and for obtaining orders to be processed by fabricators other than taxpayer. Customer ultimately sold the samples to its employees. The use after fabrication and before resale was a use going beyond mere demonstration or display. Thus, neither the fact that the garments were called “samples,” nor the fact that there was an ultimate retail sale of the samples by the customer, warranted a conclusion that the utilization made of the samples constituted “use for demonstration and display.”

Annotation 280.1080 involved a situation similar to the one you pose. Yardage was purchased, manufactured into sample coats, and the coats were used as sample coats by the manufacturer in his own business. There was no intervening use which could be characterized as something other than “retention, display, or demonstration.” Thus, it was a nontaxable use.

Likewise, in the case before us, the purpose of taxpayer’s ex-tax purchase was to utilize the yardage by incorporating it into the manufactured article - - the samples. The samples were then used solely for demonstration or display while holding them in the regular course of the taxpayer’s business.

Such use was nontaxable within the meaning of the references cited above.

MHH:jw