

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-5550

Court specifically ordered transfer of partial property as part of the court's damage award. No settlement involved.

March 26, 1990

Mr. E--- F. W---
E--- F. W--- Interiors
XXXXX --- Boulevard
--- ---, CA XXXXX

Re: SR – XX-XXXXXX

Dear Mr. W---:

This is in response to your letter dated February 28, 1990 regarding the application of sales tax to a transfer of property pursuant to a court judgment.

As I understand the facts about which you inquire, you were involved in litigation with your client. The judge ruled against you and awarded your client money damages and certain furnishings in your possession. The judge apparently stated that you are not required to pay sales tax on any of the items transferred to your client as a result of the litigation. He further stated that the transfer did not constitute a retail sale but constituted, in effect, damages. You ask whether your client must pay sales tax on the furnishings awarded under the judgment.

A retailer owes sales tax on his retail sales of tangible personal property in California. (Rev. & Tax. Code § 6051.) The retailer may collect reimbursement for that sales tax from his customer if pursuant to contract. (Civ. Code § 1656.1.) If your transfer pursuant to the judgment were a sale, you would be the person owing sales tax. You would be able to collect reimbursement from your client for that tax if the contract with your client so provided. Thus, if the judge ordered you to sell the furnishings to your client and also ordered that your contract of sale not provide for sales tax reimbursement, then you would owe the sales tax and you would not be able to collect reimbursement for that tax from your client. Although you have not provided us with a copy of the judge's order, it appears that the judge did not order you to sell the furnishings to your client. Rather, my understanding is that the judge ordered you to give the furnishings to your client as part of the judge's award of damages.

When a retailer removes property from his ex-tax inventory and gives the property as a gift rather than selling it, the retailer is the consumer of that property. He must report use tax measured by his purchase price of the transferred property. Although you are giving property pursuant to a court-ordered award of damages, the same analysis applies since your transfer is not a

sale of the property. You are the consumer of the furnishings you transfer pursuant to the judgment. If you paid sales tax reimbursement to your vendor when you acquired the furnishings, or if you have previously reported use tax measured by your purchase price of the furnishings, no further tax is due. Otherwise, you must report use tax on the furnishings measured by your purchase price.

We hope this answers your question. If not, feel free to write again.

Sincerely,

David H. Levine
Tax Counsel

DHL:wak
2035C

bc: --- District Administrator