

**STATE BOARD OF EQUALIZATION**

LEGAL DIVISION - MIC: 82
450 N STREET, SACRAMENTO, CALIFORNIA
(P. O. BOX 942879, SACRAMENTO, CA 94279-0082)
TELEPHONE: (916) 445-6450
FAX: (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

BRAD SHERMAN
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

E. L. SORENSEN, JR.
Executive Director

July 11, 1996

Ms. P--- S. H---
Law Offices of P--- S. H---
--- --- Building, Suite XXXX
XXX --- Street
---, CA XXXXX

Re: Sales Tax on Delivery Charges

Dear Ms. H---:

This is in response to your letter of April 10, 1996, in which you inquire of the application of sales tax to delivery charges on reupholstered furniture. In that letter you state:

“. . . [I]t is my understanding that pick up and delivery of furniture to and from her shop is exempt from sales tax so long as the following conditions are met:

1. The charge for the delivery service is separately priced and noted on the contract.
2. If the delivery is made by the company providing the upholstery services, then a contract for the services must be signed prior to any pick up of the furniture.
3. The reupholstered items must be delivered directly back to the person ordering the service, rather than to any third person or entity.”

When your client makes a retail sale, the taxable gross receipts include any charge for services that are a part of the sale. A “service that is part of the sale” includes any for which the purchaser must pay as a condition of the purchase. (Bus. Taxes L. Guide Annot. 295.1690.) Assuming your client does not require her customers to have your client pick up the furniture from the customer, tax would not apply to your client’s reasonable charge for that “pick up” service. Your client should separately state that optional charge on her invoices.

We turn now to the application of tax to your client's charge for transportation of the reupholstered furniture to the customers. Revenue and Taxation Code section 6012, subdivision (c)(7), excludes from "gross receipts," the amount upon which sales tax is computed:

"Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the sale of the property is made to the purchaser."

Enclosed is a copy of Sales and Use Tax Regulation 1628, Transportation Charges, for your further information. We assume from your letter that your client transports the reupholstered items to the customer by your clients' own vehicles rather than shipping them by carrier.

As provided in subdivision (b)(2) of Regulation 1628, when transportation is by the retailer's facilities, tax applies to the transportation charge to the purchaser unless "(A) the transportation charges are separately stated, (B) are for transportation from the retailer's place of business or other point from shipment is made directly to the purchaser, and (C) the transportation occurs after the sale of the property is made to the purchaser." When transportation is by the retailer's facilities, title to the property passes when the property is delivered to the purchaser at the destination unless there is an explicit written agreement executed prior to the delivery that title is to pass at some other time. (Reg. 1628, subd. (b)(3)(D).)

In specific answer to the second condition you noted, the fact that your client and her customers sign a contract prior to the pick up of the furniture would not cause the sale to occur prior to transportation. Rather, prior to your client's delivering the reupholstered furniture to her customer, your client and the customer should execute an explicit written agreement that title is to pass prior to the transportation.

In the third condition you noted, you state your belief that your client must deliver the reupholstered to the person ordering the service rather than to a third party or entity. As noted in subdivision (a) of Regulation 1628, "[p]roperty will not be considered delivered 'directly to the purchaser' if it is shipped to the retailer, to the retailer's agent or representative, or to anyone else acting in the retailer's behalf." We believe the retailer may deliver the items to a third person or entity designated by the purchaser to accept delivery on its behalf.

Revenue and Taxation Code section 6596 provides a basis for relief from tax when a taxpayer reasonably relies on written advice from the Board. Written advice from the Board must be in response to a written request for opinion. The opinion request must disclose all

relevant facts, including the identity of the taxpayer. Since you have not identified your client, this opinion is merely to provide you with general information.

We hope this answers your questions; however if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:cl

Enclosure (Regulation 1628)

cc: --- District Administrator