



STATE BOARD OF EQUALIZATION

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August 25, 1992

BURTON W. OLIVER
Executive Director

Mr. F. S--- C---
A--- A---
XXX --- --- Drive
--- ---, California XXXXX

Re: SR --- XX-XXXXXX

Dear Mr. C---:

This is in response to your letter dated July 13, 1992 in which you ask whether sales tax applies to your business of applying solar window tinting and vinyl pinstripping.

You apply the tinting and pinstripping to commercial store-front windows, homes, cars, boats, and airplanes. You state that you always pay sales tax to your vendors when you purchase the materials you need for a job. You bill your customers in a single lump sum, with no separate itemization of materials and labor. I will discuss the tinting and pinstripping of real property (commercial store-front windows and homes) first and then discuss application to tangible personal property (vehicles, vessels, and aircraft).

Real Property

When you tint or pinstripe real property, you are a construction contractor for purposes of sales and use taxes. Regulation 1521, a copy of which is enclosed, explains the application of tax to construction contracts. Generally, a construction contractor is the consumer of any materials he or she furnishes and installs onto real property and is the retailer of any fixtures he or she furnishes and installs onto real property. (Reg. 1521(b)(2).)

"Materials" is defined to include property which loses its identity to become an integral and inseparable part of the real property. (Reg. 1521(a)(5) and Appendix A (list of typical items regarded as materials).) "Fixtures" is defined to include items which are accessory to a building or other structure and which do not lose their identity as accessories. (Reg. 1521(a)(5) and

Appendix B (list of typical items regarded as fixtures.)

You have not described the property that you furnish and install pursuant to your contracts. For purposes of this opinion, I assume that they are "materials" within the meaning of Regulation 1521. Based on this assumption and your description of your contracts, we conclude that you are the consumer of such property. The sale of the property to you, or your use of the property (by installing it onto real property), is subject to sales or use tax. There is no sales or use tax applicable to your construction contract with your customers. Since you pay sales tax (reimbursement) when purchasing this property, no further tax is due.

Tangible personal property

Tax does not apply to the charge for applying lettering to trucks or automobiles. (Business Taxes Law Guide Annot. 345.0040 (12/4/50).) This rule would also apply to lettering applied to vessels and aircraft. We have previously concluded that pinstriping on automobiles should be treated similarly to lettering applied to automobiles. This rule would again also apply to pinstriping of vessels and aircraft. Thus, your lump sum charges for pinstriping vehicles, vessels, and aircraft are not subject to tax. You are correct in paying sales tax (reimbursement) when purchasing the items you will apply as pinstriping.

I assume that you are tinting windows that, at the time you perform the tinting, are component parts of used, rather than new, vehicles, vessels, and aircraft. Based on these assumptions, you are performing repairs. Regulation 1546, a copy of which is enclosed, discusses the proper application of tax to repairs. Since you make no separate charge for the property furnished in connection with the repairs (tinting), you are a consumer of such property if its retail value is 10 percent or less of your total charge to the customer. When such is the case, no tax applies to your charge for tinting and you are properly paying sales tax (reimbursement) when purchasing such property.

On the other hand, when the retail value of the property you furnish in connection with the tinting is more than 10 percent of your total charge, you are a retailer of such property, and you must segregate on the invoices to your customers the fair retailing selling price of such property. If you do not make a segregation of the charge for the property you furnish, the Board will determine the fair retail selling price of the property based on the information available to us.

I assume that the fair retail value of property you furnish when tinting windows on vehicles, vessels, or aircraft is sometimes more than 10 percent of your total charge. With respect to such transactions, you are a seller and must therefore hold a seller's permit. Although you owe sales tax on the sale to your customer measured by the fair retail value of the property you furnish, you are entitled to a deduction with respect to sales tax (reimbursement) you paid your vendor when purchasing the property. This is explained in Regulation 1701, a copy of

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which is enclosed. The end result of this rule is that if you pay sale tax reimbursement when purchasing the property, you will owe tax on the net difference between the amount you paid and the fair retail selling price to your customer.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Senior Tax Counsel

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Enclosures (3)