

Memorandum

295.1360

To: San Francisco – Auditing (ESA)

June 10, 1953

From: Headquarters – Sales Tax Counsel

Subject: W--- L---
XXX --- Street
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W--- L--- A---
XXX --- Street
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The point of difference in our viewpoint and that of Mr. S---, representing L---, appears to center on the question of whether L---'s charges for exhibiting various designs (so that the client can decide which, if any, he will take) are gross receipts from the sale of the one finally contracted for and which L--- is obligated to make and deliver. For example:

If L--- contracts to make and deliver a particular label, all costs of production are part of taxable receipts, regardless of how many labels may be made and discarded before the one exactly meeting specifications is produced. On the other hand, if, before contracting to deliver a specific item and before the client becomes obligated to accept a particular item, a number of samples are produced, in order to display to the client the type of work which can be produced, and the particular design which L---'s research shows will probably best promote sales, his charges are not taxable.

Upon entering into a contract for the production of the item selected by the client all costs thereafter incurred in the course of production are not deductible from gross receipts paid or payable for the particular item which the client has obligated himself to accept and pay for.

Mr. S--- informs me that Mr. L---'s receipts are capable of segregation as between the taxable and nontaxable categories, and will arrange to submit such a segregation to your office in order that appropriate adjustments to the audit may be made.

L--- also does interior decorating and sells furniture and furnishings. Usually the fee for the design and consulting services in such cases is a percentage of the total charge. The fee charged for such services covers consultations, room layouts, coordination of furniture,

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furnishings and fabrics, selection of color schemes, and supervision of the repainting of the interior. In our opinion the fee charged for the services mentioned represents a service and is not a part of gross receipts from sales.

Mr. S--- will be available in San Francisco from this day forward and it is suggested that a reaudit report be prepared, giving effect to the considerations set forth herein.

E. H. Stetson

EHS:ph