



STATE BOARD OF EQUALIZATION

November 28, 1952

A--- P--- & Company
XXX North --- Boulevard
--- --- XX, California

Account No. -- - XXXXX

Attention: Mr. A--- J. S---

Gentlemen:

This is in reply to your letter of June 23 concerning the application of sales tax to the sale and installation of mirrors. You state that in a typical transaction you charge your customer \$120.00 for installed mirrors, charging sales tax reimbursement on the entire lump-sum. You then contract with a glass manufacturer for the manufacturer to do the actual installation. The manufacturer charges you \$75.00 for material and \$22.75 for labor, charging you sales tax reimbursement on the material price. The question presented is whether the manufacturer's sale of the material to you is taxable or whether your sale of the installed mirror to your customer is taxable.

The problem is to determine whether the mirror, when installed, is regarded as becoming part of the realty. A mirror which merely hangs on a wall by wires attached to nails would not be regarded as becoming part of the realty. Accordingly, if the mirror or mirrors retained their status as personalty you are entirely correct in your view that their sale to you would be an exempt sale for resale of tangible personal property, with the sale by you to your customer constituting a taxable retail sale. While separately stated installation labor charges by you would be exempt, your entire lump-sum charge is taxable in the absence of separately stated installation charges.

In the foregoing we have assumed that the mirrors retain their status as personalty. On the other hand, the application of the sales tax to construction contractors is governed by Sales and Use Tax Ruling 11 (copy enclosed). Where a mirrored wall is installed or where "glass" becomes an integral and inseparable part of the completed structure the "glass" or mirrored wall is regarded as "materials" under Ruling 11. Subcontractors are contractors within the meaning of that ruling. Accordingly, if the T--- G--- Company was furnishing and installing "materials" as defined therein, in improving realty in performing their sub-contract, sales tax reimbursement need not be charged by you to your customer inasmuch as you are not regarded as selling tangible personal property. If "materials" were involved the T--- G--- Company would normally be regarded as the consumer thereof. In the present instance, however, assuming that "materials" were involved, the second paragraph of that section of Ruling 11 entitled "Materials Used by Contractors" would apparently govern so that the "tax" charged to you would not be improper.

Only if contractor was "selling" the materials (1521(b)(2)A.2.) DHL.
--

It is also possible that the mirrors involved are “fixtures” as defined in Ruling 11. Such would apparently be the case if they are frame mirrors securely affixed to the building by screws which have not lost their identity as accessories when placed or installed. If the mirrors involved are “fixtures” the last retail sale would be made by T--- G--- to you, with the sale price being properly regarded as \$75.00

If you have any further questions relating to this transaction, please furnish us with complete information as to the type of mirror, manner of installation, and other pertinent details. We are sorry that we mislaid your letter and did not answer it until this time.

Very truly yours,

W. W. Mangels
Assistant Counsel

NBH:WWM:ja

cc: Santa Monica – Auditing