

M e m o r a n d u m**190.2508**

To: Vic Anderson, Supervisor
Special Projects, MIC:40

Date: December 31, 2001

From : Sharon Jarvis
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Subject: Q--- B--- E--- S--- S--- Co.
SR S -- XX-XXXXXX

I am responding to your memorandum dated August 31, 2001 to Assistant Chief Counsel Janice L. Thurston concerning the above taxpayer. You requested a legal opinion on the meaning of language in Regulation 1521(c)(12) as amended April 5, 2000. Regulation 1521(c)(12), as amended, reads as follows:

“ON-PREMISE ELECTRIC SIGNS

“(A) An on-premise electric sign is any electrically powered or illuminated structure, housing, sign, device, figure, statuary, painting, display, message, placard or other contrivance or any part thereof affixed to real property and intended or used to advertise, or to provide data or information in the nature of advertising, for any of the following purposes: 1) To designate, identify, or indicate the name or business of the owner or occupant of the premises on which the advertising display is located, or 2) To advertise the business conducted, services available or rendered, or the goods produced, sold, or available for sale, upon the property where the advertising display has been erected.

“(B) Application of Tax. An on-premise electric sign is a fixture and tax applies to the sale price of the sign. Notwithstanding the provisions of 1521(b)(2)(B), operative October 1, 2000, if the contract does not state the sale price of the sign, tax applies to 33 percent of the contract price of on-premises electric signs that are furnished and installed by the seller. ‘Contract price’ includes charges for materials, fabrication labor, installation labor, overhead, profit, and other charges associated with the sale and installation of the sign. If a contract provides that a contractor is to install an on-premise electric sign furnished by a third party, the charges for installation are not taxable. If a seller furnishes but does not install an on-premise electric sign, the seller is a retailer of the sign and tax applies to the total contract price.

“Separately stated charges for transportation are subject to tax as defined in Regulation 1628, *Transportation Charges*.”

Your memorandum states:

“We are...requesting a legal opinion for periods beginning October 1, 2000 as it relates to the taxable measure for on-premise electric signs. The district staff is of the opinion taxable measure should be computed as outlined in Regulation 1521(c)(12)(B). The issue is whether tax able measure **must** be computed at 33 percent as stated in the regulation or if a lesser amount can be accepted, with appropriate support from the taxpayer.”

It is our opinion that the clear wording of Regulation 1521(c)(12) requires tax to apply to 33 percent of the lump-sum contract price for the furnishing and installing of an on-premise electric sign by the seller, i.e., in those instances where there is no separate statement of the sale price of the sign in the contract. As such, the tax *must* be so computed on and after October 1, 2000, and a lesser amount may not be accepted. This interpretation is supported by subdivision (c)(12)(B)'s unequivocal wording, and the inclusion in the subdivision of the phrase, “Notwithstanding the provisions of 1521(b)(2)(B)...”

The wording of subdivision (c)(12)(B) clearly says that if there is no statement of the sale price in the contract, the sale price is deemed to be 33 percent of the contract price. There is no provision in the wording for an alternative method of computing the sale price. Moreover, the language of the subdivision contains the word “notwithstanding.” “Notwithstanding” is defined in the dictionary as “in spite of the fact that.” (Webster's New World Dictionary, (3d ed. 1991) p. 928.) Thus, subdivision (c)(12)(B) may be restated as saying that in spite of the fact that subdivision (b)(2)(B) explains how to determine the sale price of fixtures in general when the contract does not state that sale price, as to *electric signs* when the contract does not state the sale price of that specific category of fixtures the price shall be 33 percent of the lump-sum contract price and not the sale price as determined by applying rules in subdivision (b)(2)(B).

It is also of note that the April 5, 2000 Minutes of the State Board of Equalization discuss the proposed amendments to Regulation 1521 that were adopted unanimously by the Board and subsequently approved by the Office of Administrative Law, as follows:

“David H. Levine, Acting Assistant Chief Counsel, Business Taxes, reported that Regulation 1521 is proposed to be amended to interpret, implement and make specific Revenue and Taxation Code section 6012. The regulation, in part, currently sets forth a series of formulae by which a manufacturer/installer of fixtures may calculate taxable gross receipts derived from specified construction contracts. Amendments are proposed to provide that the measure of tax on sales of on-premise electric signs furnished and installed by the seller as an improvement to real property pursuant to a lump sum contract *shall* be 33% of the total contract price.” (Emphasis added.)

We read the above as a vote by the Board to require that the measure of tax on sales of electric signs furnished and installed by the seller under a lump sum contract shall be 33 percent of the contract price, and not some other lesser or greater amount. This further confirms our interpretation of the language.

I hope this information is of assistance, and apologize for the delay in my response to you.

SJ/ef

cc: Ms. Charlotte Paliani, MIC:92
Mr. John Waid, MIC:82
Mr. Peter Horton, MIC:50