

M e m o r a n d u m**240.0010**

To: R. K. Bennet
Arcadia Audit Unit

May 29, 1991

From: Elizabeth Abreu
Tax Counsel

Subject: R. R. B--- and M. M---
dba B--- - B---
SR -- XX-XXXXXX and SR -- XX-XXXXXX

By memorandum dated April 12, 1991, you inquired if we could identify a ruling which the above-referenced taxpayer asserts he obtained in 1959 or 1960. According to your memorandum, the facts are as follows:

B--- - B--- was a partnership which was closed out in 1974 when one of the partners died. The board has completed an audit of the successor, a sole proprietorship owned by R--- B---. The results are nonconcurrent.

Mr. B--- contends that in 1959 or 1960 the partnership obtained a ruling from the board concerning the application of sales tax to the partnership's florist business. Mr. B--- asserts that the board ruled that not all of his gross receipts were subject to sales tax because he was allowed a deduction for exempt installation labor.

Mr. B---'s business sells fresh flowers to two race tracks under lump-sum contracts. Mr. B--- delivers the flowers to the betting rooms, removes the old flowers from the vases and leaves them on a table or counter, and arranges the fresh flowers in the same vases. The predecessor partnership was engaged in similar transactions.

We have been unable to locate the opinion which Mr. B--- alleges the board issued. Before Mr. B--- may be excused from payment of taxes because of his reliance on this opinion, he must submit a copy of his written request to the board and a copy of the board's written advice to him. He must also meet all the other requirements set forth in Revenue and Taxation Code section 6596. If the partnership sought the advice rather than Mr. B---'s sole proprietorship, it is the position of the board's staff that Mr. B--- cannot rely upon the advice

because he does not meet the requirement that only the person making the written request shall be entitled to rely on the board's written advice to that person. (Rev. & Tax. Code § 6596(d).

From your description of Mr. B---'s contracts, we conclude that Mr. B---'s charges do not include charges for installation labor which are nontaxable under Revenue and Taxation Code section 6012(c)(3). Under his contracts Mr. B--- appears to be charging his customers for the flowers, for delivery of the flowers and for arrangement of the flowers in the vases. It is clear that his charges for the flowers are taxable. We assume that he delivers the flowers in his own trucks and that his contracts do not provide that title passes before delivery. Therefore his delivery charges are includible in gross receipts and are taxable. Rev. & Tax. Code § 6012(a)(2).

Neither the Revenue and Taxation Code nor the regulations define installation labor, but generally it connotes the anchoring, attaching, connecting, mounting, or fastening of property to other property, often by using items such as glue, bolts, screws, nails, or wires to make the connection. Such labor also includes tuning, testing, and adjustment of the property during installation.

Mr. B--- is not physically connecting the flowers to the vases. Turn the vases upside down and the flowers will spill to the ground. If he is just sticking the flowers in the vases without regard to their arrangement, we will treat his charges for such labor as transportation charges because again he is not connecting the flowers to the vases. Rather, he is just following the customer's direction with respect to placement, i.e., transportation. Tobi Transport, Inv. v. State Board of Equalization (1980) 104 Cal. App. 3d 730.

If you need further assistance, please let us know.

EA:cl

cc: Hollywood District Administrator