

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-8208

January 23, 1992

Mr. K--- M---
K--- M--- & Associates, Inc.
XXXX --- Way
--- ---, California XXXXX

Re: Application of Sales Tax to Installation Costs

Dear Mr. M---:

Your letter dated November 20, 1991, to the Board of Equalization has been referred to me for a response. In your letter you state that you sell and install cabinets as a contractor and subcontractor. You include sales tax in your bids for subcontracting work but not in your bids for your work as a contractor. You do not separately list installation charges in any of your bids or invoices. You ask whether you should include the cost of installation in the measure of sales tax.

In answering your letter we are assuming that the cabinets you sell are fixtures and therefore your sales are taxable because you are the retailer, not the consumer, of the cabinets. Sales and Use Tax Regulation 1521(c)(2), entitled "Construction Contracts," explains when a cabinet is considered a fixture. This regulation (a copy of which is enclosed) further explains other rules applicable to construction contracts, including the difference in application of tax between materials and fixtures.

Sales tax is measured by the gross receipts from the retail sale of tangible personal property. Rev. & Tax. Code § 6051. "Gross receipts" do not include the price received for labor or services used in installing or applying the property sold. Rev. & Tax. Code § 6012(c)(3) and Sales and Use Tax Regulation 1546(a), "Installing, Repairing, Reconditioning in General."

Under the statute and the regulation, installation charges are excluded from the measure of tax even though they are not separately stated in a bid, contract, or invoice. And such charges are excludible whether you are the contractor or subcontractor. As a matter of practice, however, we recommend that you list installation charges separately in such documents. If your business is audited, the audit will be easier and less time consuming for you if such charges are stated separately. Whether you separately state such charges or not, though, you must maintain adequate records to show that any amounts you exclude from the measure of sale tax on this basis represent nontaxable installation charges.

We note for your information one concern about your bids. You state that your third type of bid provides: "TOTAL PRICE DELIVERED INCLUDING INSTALLATION, EXCLUDING TAX - - \$XXXXXXXXXXXX." Sales tax is imposed upon the retailer, not the buyer, but the retailer may add sales tax reimbursement to the sales price by the terms of agreement of sale. Rev. & Tax Code § 6051 and Civ. Code § 1656.1. Your bid is ambiguous and could be construed to mean that you are not charging the buyer sales tax reimbursement. You may wish to clarify your bid by stating that the bid amount excludes tax but tax will be added to the invoice.

We are enclosing a copy of Regulation 1546 for your information. If you have further questions regarding sales and use tax law, please do not hesitate to write again.

Sincerely,

Elizabeth Abreu
Tax Counsel

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Enclosures