

Memorandum

370.0115

To: Mr. J. W. Cornelius, Supervisor (MIC: 40)
Audit Evaluation and Planning Section

Date: December 30, 1996

From: Sophia H. Chung
Tax Counsel

Subject: G--- C--- District
Account No. SR -- XX-XXXXXX

Your memorandum dated November 15, 1996, to Mr. Gary J. Jugum, Assistant Chief Counsel, has been referred to me for response. You request a legal opinion regarding the proper measure of tax for the sale of a burial vault in connection with the execution of a pre-need agreement.

The taxpayer has provided a copy of an Agreement to Purchase Pre-Need Burial Rights, Endowment Care, Merchandise and Services. This contract separately lists the following fees: (1) cash price for merchandise (vault, liner, urn); (2) cash price for opening/closing; (3) cash price for pre-need contract; and (4) sales tax reimbursement. The taxpayer has explained to a member of your staff that the opening/closing fee is for services such as opening the grave and setting up a tent, and that the pre-need contract fee is an amount set by the Board of Directors to offset the increase in costs at the time of burial for both the merchandise and the services. The amount of the pre-need contract fee is determined based on the current pre-need fund, the current liability, and the number of pre-need agreements sold.

DISCUSSION

As you know, Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales in this state of tangible personal property, unless the sale is specifically exempt from taxation by statute. Revenue and Taxation Code section 6012 provides that "gross receipts" mean the total amount received from the retail sale of tangible personal property.

Sales and Use Tax Regulation 1505 provides that tax applies to the sales of caskets, boxes, vaults, and clothing by morticians, and to the sales of other tangible personal property furnished by morticians in connection with rendering their services if a separate charge is made for such property. Where a mortician, cemetery association or other person enters into an agreement with a customer to provide services upon the death of the customer, no sale occurs for sales and use tax purposes until the services are rendered. (Reg. 1505(c).)

In this case, the gross receipts from the sale of the tangible personal property include the charge for the merchandise and the portion of the pre-need contract fee which represents the amount to offset the future increase in cost for the merchandise. This amount should be reported on the tax return for the period in which the burial services are rendered.

SHC:rz