

Memorandum**395.1255**

To: Aaron Phillips
Audit Review and Refund Section

Date: December 21, 1992

From: Donald L. Fillman
Tax Counsel

Subject: M--- C. and M--- A. E---
SR -- XX-XXXXXX

We have reviewed the letter from Mr. and Mrs. E--- dated July 30, 1992, as well as their application for a seller's permit. The E---s applied for and received a permit to operate a "snack bar with laundromat." It appears that this was one business, not two, located at the same address, without any physical barriers, and operated as a joint endeavor.

The E---s sold tangible personal property from their business and reported the sale on their sales and use tax return. Included were washers and dryers, pool tables, and games, all of which was initially reported as subject to sales tax.

An amended return was filed in which the E---s claimed that only the fixtures and equipment were subject to sales tax, while the washers and dryers should be exempt as an "occasional sale."

An "occasional sale" is made exempt by section 6367, and is defined in section 6006.5(a) of the Revenue and Taxation Code. A part of this definition includes the requirement that the tangible personal property sold not be held or used by a seller in the course of activities for which he or she is required to hold a seller's permit or permits.

Regulation 1595(a)(3) acknowledges the fact that a single owner could own two separate businesses. The example was "a hardware store at one location and a real estate brokerage business at another location, with no relationship between the two activities except that of common ownership." In this example the real estate business could have an exempt occasional sale of its office furniture, while office furniture sold from the hardware store would not be exempt.

Regulation 1595(a)(5)(B)(2) gives an example of "[w]here a service enterprise and a sales business are operated together so as to constitute one business tax will apply to the sale of the assets of the business."

Annotation 395.0240 involved a situation in which the retailer operated two businesses at the same location. One was a self-laundry (which could often be an exempt business) and the other was a retail store selling laundry equipment. The sale of used machines from the self-laundry portion was not an exempt occasional sale.

The E---'s retail establishment, which was run as a single business, required a seller's permit. It is our opinion that the sale of the washers and dryers is subject to sales tax.

DLF:wk