

Memorandum

460.0005

To : Mr. Bruce Barkley (KH)

Date: December 15, 1993

From : Rachel M. Aragon
Staff Counsel

Subject: "No Sales Tax" Advertisement

This is in response to your memorandum dated November 15, 1993. You attached an advertisement in which J--- H--- F--- is advertising "no sales tax" on all furniture, and you ask if the advertisement is in violation of Section 6205 which makes it unlawful for a retailer to advertise to the public, directly or indirectly, that the tax or any part of it will be absorbed by the retailer or that it will not be added to the sales price.

The sales tax is imposed on the retailer, but the retailer may collect sales tax reimbursement (usually itemized on the invoice as "sales tax") from the purchaser if the contract of sale so provides. (Rev. & Tax. Code § 6051, Civ. Code § 1656.1.) When sales tax does not apply, use tax applies to the use of property purchased from a retailer for use in California. The retailer must collect the tax from the purchaser. (Rev. & Tax. Code §§ 6201, 6203, 6401.)

Although the retailer may collect sales tax reimbursement from its customer, it is not obligated to do so. That is, the retailer remains liable for the sales tax without regard to whether it collects sales tax reimbursement from the customer. On the other hand, the retailer is obligated to collect the use tax from the purchaser. Section 6205 is part of Article 1 of Chapter 3 of the Sales and Use Tax Law. Chapter 3 is entitled "The Use Tax," and section 6205 applies to the use tax, not to the sales tax. Since the advertisement refers to sales tax and presumably relates to sales subject to sales tax, the retailer has not violated section 6205.

I note that in these types of advertisements, the retailer often has a footnote stating that the sale will actually be tax-included at the usual selling price. The advertisement you provided does not have such a statement. Unless the seller does have a statement meeting the requirements of Regulation 1700(a)(2), (for example, including on the price tag information that tax is included) it would not be entitled to report on a tax-included basis.

If you have any other questions, please feel free to write again.

RMA:ljt