

# Memorandum

515.0002.900

Reg. 1501.

Color analysis consultants  
are retailers of the color  
books delivered to clients

To: San Jose - Auditing (RDC)

Date: April 23, 1986

From: E. Leslie Sorensen, Jr.  
Tax Counsel

Subject: REDACTED TEXT

This is in response to your memorandum of March 12, 1986. Your letter stated:

“A question has risen regarding the tax implications of color analysis consultants. The consultants, usually female, in this growth industry spend time with the client, usually female. The time spent with the client varies depending on whether just a color analysis is involved, or whether skin care, make-up, wardrobe planning, etc. is also involved.

At the conclusion of the color analysis, a packet (color book) is usually delivered to the client which displays the client's colors as determined by the consultant. The client uses the color book when shopping for wardrobe. In most instances, the color book provided is included in the consultant's fees and not separately priced.

The consultant's fees for the color analysis can range from \$25 to \$95 with most fees being in the \$45 range. There are numerous suppliers of these color books to the consultants. The suppliers may also train the consultants. Prices of the color books to the consultants varies depending somewhat on volume, but is probably in the \$7 - \$15 range. Many of the suppliers are located out of state.

Please give us your opinion as to whether the consultant is the consumer or retailer of the color books. If the consultant is the retailer of the color books, included in the fee, what is the taxable amount?”

Opinion

In our view, color consultants are in the business of providing services as well as making retail sales of tangible personal property. While it is true that the consultant is apparently providing services through communication of her ideas, knowledge, and expertise to customers it is equally apparent that she is also transferring tangible personal property of significant value.

Under such circumstances, the consultant is deemed to be the retailer of the color books. (For similar treatment of other business see BTLG annos. 515.0060, 515.0820, 515.1240.) If a separate charge for the color books is stated on the customer's invoice, tax is due based upon this amount. If no separate statement is made, an allocation must be made and tax must be measured based upon the fair retail selling price of the color books (see BTLG annos. 330.2310, 295.0140).

ELS:rar