

557.0106

M e m o r a n d u m

To : Ms. Karen Berlin
Return Review Section (MIC:35)

Date: May 31, 1995

From : Thomas J. Cooke
Staff Counsel

Subject: **Application of Sales Tax to Delivery Charges**
C--- C--- - SR -- XX-XXXXXX

This office has received your memorandum dated May 18, 1995 in which you requested an opinion as to the taxability of separately stated transportation charges pursuant to the above taxpayer's contract with its customers.

In your memorandum, you state that the taxpayer manufactures cabinets for his customers. The taxpayer builds cabinets according to the specifications supplied by its customers. The taxpayer builds the cabinets in its shop and when completed, delivers the cabinets in its own truck to the purchaser. The taxpayer's truck is fully insured, and if for some reason the cabinets were damaged during delivery, the taxpayer's insurance company would pay for the damaged cabinets. The retailer does not install any of the cabinets that are sold.

The taxpayer does state the delivery charges separately on the invoice. The cabinets are delivered from the retailer's place of business directly to the purchaser.

Regulation 1628(b)(2) provides, in part -

“... when transportation is by facilities of the retailer ..., tax applies to charges for transportation to the purchaser, unless (a) the transportation charges are separately stated, (b) are for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, and (c) the transportation occurs after the sale of the property is made to the purchaser. When the sale occurs before the

transportation to the purchaser commences, the tax does not apply to separately stated charges for the transportation. ...”

Regulation 1628(b)(3)(D) provides, in part -

“Unless explicitly agreed that title is to pass at a prior time, the sale occurs at the time and place at which the retailer completes his performance with reference to the physical delivery of the property. ... When delivery of the property is by facilities of the retailer, title passes when the property is delivered to the purchaser at the destination unless there is an explicit written agreement executed prior to the delivery that title is to pass at some other time.”

Each of the contracts that you submitted for our review contains the following language:

“Please indicate color, delivery date and appropriate options, sign and return one copy with check for one third of total. Be advised that title to your completed custom cabinetry passes upon completion of the work at our shop.”

It is our opinion that this language is sufficient to exclude separately stated transportation charges from tax under the conditions stated in your memorandum. We do not believe that the taxpayer's insurance coverage on its truck is a relevant consideration.

TJC:plh