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December 12, 1985

Mr. J--- -, M---
M--- C--- C---, Inc.
XXX --- Square
---, CA XXXXX

Dear Mr. M---:

Your letter to Mr. Donald Hennessy dated November 19, 1985, has been referred to the undersigned for reply. On behalf of an unidentified client, you ask whether a sale of furniture and fixtures used in the client's business will qualify as an exempt occasional sale. You cite the facts as follows:

"This client is in the deburring business which involves polishing metal objects manufactured by various companies. The do not have the internal expertise or find it more acceptable to contract their work to my client. This process is a non-taxable event in that the manufacturer delivers their product to my client who deburrs same and it is then returned to the manufacturer for assembling. My client holds a Sellers Permit to accommodate very small companies who want to buy small quantities of materials used in the deburring process, which is a taxable transaction. This activity represents less than 1% of gross receipts for the last 12 month."

You believe that the proposed sale of furniture and fixtures will qualify as an exempt occasional sale under subdivision (a)(5)(A) of Sales and Use Tax Regulation 1595, which provides:

"1. Operators of service enterprises such as hospitals, hotels, theaters, schools, laundromats, car washes, transportation companies, and trucking companies may make some sales incidental to their primary services business. A hospital may operate a pharmacy and cafeteria as an adjunct to the hospital. A hotel may operate a restaurant and a bar. A theater may sell popcorn to patrons. A school may operate a cafeteria and bookstore. A laundromat may sell soap to its customers.

“If any of these businesses were sold, tax would apply only to the gross receipts from the tangible personal property held or used in the selling activity.

“2. If, in any 12 month period, the operator of the service enterprise makes more than two sales in substantial amounts of tangible personal property used in the service enterprise, the gross receipts from those sales is subject to tax, unless otherwise exempt (such as a sale in interstate commerce). If one of the sales is a sale of the business, the tax applies to the gross receipts from the sale of the tangible personal property. In determining whether there are more than two sales of tangible personal property, trade-ins of used equipment for new, incidental to the service enterprise, will not be counted.

The board’s legal staff has previously concluded that: “Polishers engaged exclusively in the business of polishing metal articles for persons who resell the polished articles are not required to hold a seller’s permit.” (Sales and Use Tax Annot. 410.0340 [5/17/50].)

Based on the facts recited in your letter, we assume that your client polishes metal articles exclusively for persons who resell the polished articles, and not for consumers. We also assume that your client will not make more than two sales in substantial amounts of property used in the polishing activity. Given these assumptions, we agree that tax on the sale of the furniture and fixtures will apply only to the gross receipts from the tangible personal property held or used in the selling activity. Tax will not apply to the sale of property used exclusively in the polishing activity.

However, if either of our assumptions is incorrect, the proposed sale of furniture and fixtures will not qualify as an exempt occasional sale.

Please note that, since you have not identified your client, this letter may not be relied upon for purposes of Revenue and Taxation Code Section 6596.

Very truly yours,

James E. Mahler
Tax Counsel

JEM:ba