M e m o r a n d u m

150.0125

To: Mr. Glenn Bystrom

Date: July 10, 1996
And 4/13/81

From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed Bill Dunn's memorandum of April 13, 1981 from Evaluation and Planning Unit.

We are in agreement with his conclusion as follows:

Draperies Sold With Residence. A retailer sells and installs draperies to a construction contractor who will resell the draperies together with the home. The drapery retailer is making a retail sale of the draperies. Since the sale of the draperies in place by the contractor is not a sale of tangible personal property under Regulation 1596, removal of the draperies is not contemplated by either the seller (contractor) or the buyer. 4/13/81

State of California **Board of Equalization**

Memorandum

150.0125

To: Mr. D. F. Brady

Date: April 13, 1981

From: Evaluation and Planning Unit

Subject: Draperies Sold with A Residence

As a result of an inquiry from a construction contractor, Don Hennessy and Margaret Howard requested that we provide a history of what has happened with regard to sales of draperies by construction contractors where the draperies are sold with the home.

We have reviewed the file of [X] to determine what hearing decision was given by the Board as a result of the audit made of [X] and the construction contractors against whom the tax was later determined.

On May 1, 1974, as a result of a petition of an audit of [X] for the period 1-1-66 to 6-30-69, the Board concluded that, in many instances, the Petitioner sold draperies to construction contractors for resale inasmuch as the contractors did, in fact, resell houses with the draperies installed. The Board ordered that the tax be redetermined in the reduced amount of $65,995.92, plus statutory interest, which gives effect to the reaudit of March 27, 1974.

As a result, Field Billing Orders were issued to the construction contractors with the comment in the analysis section, "Ex-tax draperies, purchased from [X] which were resold at retail when the installed drapes were sold with the houses."

Notices of determination dated March 27, 1974, were mailed to the construction contractors and all were petitioned. On September 21, 1976, the Board minutes contained the statement of Board action that the petitions be granted. The notices of redetermination dated October 1, 1976, contained the comment "The Board concluded that the sales of the particular drapes in question together with the houses in which they were installed were not sales of tangible personal property and were not subject to sales tax." The end result is that no one was held liable for tax on the sale of these drapes.

The file also contained an audit of [X] dated November 18, 1975 for the period 7-1-69 to 6-30-74. This resulted in $45,040 tax, an amount which included both an overstatement of taxable measure for "resales of drapery to construction contractors not claimed" as well as an understatement of taxable measure for "drapery sales to contractors disallowed." The only adjustment noted in the redetermination was a credit for application of an overpayment under

related account, [Y]. We have been informed by deletions that the file on this related account has been destroyed.

A closeout audit of [Y] was made on May 3, 1976 for the period 7-1-74 to 3-31-75. This audit resulted in only $198.96 additional tax which included a credit for an "overstatement of drapery sales." The balance of the California operation was transferred to [X], which was a related account with Mr. [Z] also acting as President. This account was audited for the period 10-1-74 to 12-31-77 with no indication of a problem with sales of draperies.

We contacted the District and Subdistrict Principal Auditors of San Diego, San Mateo, Orange County, and Oakland to determine what procedure they are following on taxing similar drapery sales. All of the District Principal Auditors, after further discussion with their Supervising Tax Auditors, stated that they were not encountering the problem of construction contractors selling homes with the draperies included. The San Mateo Subdistrict Principal Auditor and Oakland District Principal Auditor stated this problem has not surfaced again to the best of their recollection. It is our impression that the districts have not considered this problem.

Attached is a memorandum by Mr. T. P. Putnam which refers to the [X] case. In the last paragraph, Mr. Putnam implies that some regulations and annotations should be changed. As a result, Regulation 1596 was revised (see attached). The revision would seem to make sales of draperies "in place" sales of fixtures and not tangible personal property. The intent was to not allow contractors to purchase draperies for resale and resell them as part of a building. Thus, the intended purpose of the revision was to make the sale to the contractor of the draperies the retail sale.

W. D. Dunn

WDD:jj