

M e m o r a n d u m**435.0827**

To: Mr. O. A. McCarty
Return Review

July 11, 1983

From: John B. Adamo

Subject: B---'s Firewood

SR – XX-XXXXXX

This is in response to your inquiry of June 27, 1983 in which you asked whether the cutting and splitting of firewood by B---'s Firewood ("taxpayer") constitutes a taxable form of labor. Based upon the May 31, 1983 letter of the taxpayer's attorney, the pertinent facts appear as follows: The Taxpayer's customers initially obtain a permit from the California Department of Forestry or the appropriate federal authority to cut and obtain firewood for their personal use. Upon obtaining the permit, the customer gives it to the taxpayer who in turn cuts, splits, and delivers the firewood for the customer. We presume that the taxpayer splits into firewood trees that he fells as well as previously fallen timber. There is no indication that the taxpayer separately states his transportation charge. The taxpayer charges his customers for his labor, but reports it as nontaxable labor on his sales and use tax returns. The taxpayer's attorney contends that this labor constitutes a nontaxable service.

Sales tax is imposed on retailers for the privilege of selling tangible personal property at retail, the measure of tax being a percentage of the retailer's gross receipts from such sales in this state. (Section 6051.) The definition of "sale in Section 6006(b) includes the "producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnishe either directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting." In pertinent part, Section 6012(a) defines "gross receipts" as as "the total amount fo the sale...price,...without deduction on account of...(2)...labor or service cost...or any other expense." Subdivision (b) provides that the "total amount of the sale...price includes...(1) Any services that are part of the sale."

It is our position that the taxpayer's splitting into firewood of fallen timber, including timber he has felled, constitutes a taxable "sale" under Section 6006(b). Tha taxpayer's customers furnish the material to be fabricated into firewood through a combination of the following tow actions: (i) giving the taxpayer their permits to cut and obtain firewood; and (ii) the taxpayer's later selection of the specific timber to be cut. The taxpayer subsequently fabricates the materials furnished by his customers to produce firewood. Firewood is tangible personal property. (Section 6016.) Sales tax applies to the total amount of his "sales" price. (Section 6012.)

JBA:at