



STATE BOARD OF EQUALIZATION

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August 29, 1996

Mr. C--- L. N---
Attorney and Counselor at law
XXXX --- --- ---
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--- ---, CA XXXXX

Re: M---, Inc.
Permit No. SS -- XX-XXXXXX

Dear Mr. N---:

This is in response to your letter dated July 1, 1996, in which you inquire of the application of tax to subcontractors' fabrication labor. You state:

“M---, Inc., (‘Taxpayer’), is . . . a distributor and systems integrator of material handling equipment and related storage facilities. The Taxpayer sells items such as conveyor systems, pallet racks and flow racks and arranges for their installation through subcontractors. . . .

“

“The Taxpayer generally contracts with the property owner or a prime contractor to furnish and install conveyer systems and storage racks. The taxpayer subcontracts the actual installation/assembly to its subcontractors.”

You describe a transaction where the taxpayer's subcontractors “perform fabrication labor on the fixtures owned by the Taxpayer prior to attachment. Subsequently, the subcontractor attaches the ‘fabricated fixture’ to the real property.”

You ask:

“[W]ho is responsible for reporting tax on the fabrication labor performed by the subcontractor, the subcontractor or my client, the Taxpayer?”

“[C]an the subcontractor accept a resale certificate from the Taxpayer for its fabrication labor when the subcontractor is responsible for the subsequent attachment of the fixture upon which its fabrication labor was performed?”

As you know, Sales and Use Tax Regulation 1521(b)(2)(B)1 provides that generally “[c]onstruction contractors are retailers of fixtures which they furnish and install in the performance of construction contracts and tax applies to their sales of the fixtures.” To determine whether it is the prime contractor or the subcontractor who is the “construction contractor” who is regarded as the retailer of the fixture, the basic rule is that the last person who has the true responsibility to furnish as well as the true responsibility to install the fixture is the construction contractor/retailer with respect to the fixture. (See Bus. Taxes L. Guide Annot. 190.0980, 10/24/52.)

We understand that the taxpayer does not sell the fixture to the subcontractor, and remains responsible to the customer for both the furnishing and installation of the fixture. Thus, the taxpayer is the “construction contractor/retailer” within the meaning of Regulation 1521(b)(2)(B)1 with respect to the fixture it furnishes, and tax applies to the taxpayer’s sale of the fixture to the customer.

The processing or fabrication work performed on the fixture by the subcontractor prior to the installation by the subcontractor is a “sale” within the meaning of Sales and Use Tax Law. (Rev. & Tax. Code § 6006(b).) It is a separate sale from the taxpayer’s sale of the fixture. As Business Taxes Law Guide Annotation 190.0660 indicates, when a subcontractor does not furnish a fixture, but prior to installation performs processing or fabrication work resulting in the production of the complete fixture, and thereafter installs the fixture, the subcontractor is subject to tax on that portion of his charge attributable to processing or fabrication. (Bus. Taxes L. Guide Annot. 190.0660, 4/17/50.) Since the subcontractor is the retailer of the fabrication labor, he or she may not accept a resale certificate from the taxpayer.

To reiterate, a subcontractor who performs fabrication labor on materials provided by the taxpayer is obligated to pay tax on the sale of that fabrication labor. The subcontractor may not accept a resale certificate for such fabrication labor.

If you have any further questions in regard to the matters contained herein, please do not hesitate to write again.

Yours very truly,

Anthony I. Picciano
Tax Counsel

AIP:cl

cc: --- --- District Administrator