

STATE OF CALIFORNIA

295.0035.180

BOARD OF EQUALIZATION

BUSINESS TAXES APPEALS REVIEW SECTION

In the Matter of the Petition)	
for Redetermination Under the)	DECISION AND RECOMMENDATION
Sales and Use Tax Law of:)	
)	
R--- A--- & R--- K---)	No. SR EA 24-862547-010
)	
)	
<u>Petitioner</u>)	

The Appeals conference in the above-referenced matter was held by Elizabeth Abreu, Staff Counsel on March 9, 1994 in Sacramento, California.

Appearing for Petitioner: No Appearance

Appearing for the Sales and Use Tax Department: Maria de la Cruz Tax Representative

Protested Item

The protested tax liability for the period April 1, 1989 through June 30, 1991 is measured by:

<u>Item</u>	<u>State, Local and County</u>
Disallowed labor deductions	\$204,722

Petitioners' Contentions

1. Petitioners' labor charges for balloon decorations were for installation and for services to create intangible artistic designs.
2. Petitioners received oral advice from a board office that its labor charges were not taxable.

Summary

The Notice of Determination in this case arose out of an inquiry dated October 25, 1991 by the Board's Return Review Section regarding the nontaxable labor deduction petitioners claimed on their second quarter return for 1991. Petitioners filed a petition for redetermination and made a written request for an Appeals conference in Santa Ana, California. Since petitioners refused to accept the envelope containing the Notice of Conference and therefore did not appear at the Appeals conference as originally scheduled, the following summary is based upon prior correspondence received by the Board from petitioners.^{1/}

Petitioners owned and operated a business which sold balloons, rented helium tanks, and provided balloon decorations. According to petitioners, the decorations included balloon arches which were "installed or assembled...on site." Petitioners stated that they were not selling tangible personal property but were contracting to "build on site at location" an intangible artistic workmanship which demanded hundreds or sometimes thousands of dollars of labor.

Petitioners stated that they "costed" their contracts on the rate of their raw material cost which was always 16.667 percent of the entire cost of the work. They charged each customer 1 percent sales tax calculated on the entire amount of the contract, thereby taxing the materials and not the labor. Petitioners separately stated charges for materials and labor. Thus, petitioners contend, the customer was purchasing the balloons and not the labor which performed the artwork.

Petitioners also contend that they spoke to someone at the Board's Santa Ana office and were told that as long as a customer had the choice of buying the balloons and helium separately, petitioners did not have to charge the customer tax on the labor charges.

The Sales and Use Tax Department (Department) contends that the labor charges were charges for services that were part of a sale of tangible personal property. Therefore, such

^{1/} Pursuant to petitioners' written request, the Appeals conference was originally scheduled for Santa Ana, California. Since petitioners refused the envelope containing the notice, a conference was held in Sacramento, California with the tax representative from the Return Review Section who had corresponded with petitioners on this matter.

charges are subject to tax. The Department also asserts that if petitioners were given erroneous advice, the advice is not a basis for relief since the advice was not given in writing.

Analysis and Conclusion

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers from retail sales of tangible personal property. Sales tax is measured by "gross receipts" which means the total amount of the sale price, including all services that are a part of the sale, without any deduction for the cost of materials used, labor or service cost, or any other expenses. (Rev. & Tax. Code § 6012.) Gross receipts include charges for assembly and fabrication labor, for work performed to fit the customer's specific requirements, and for design work that is part of the sale of tangible personal property. (Sales and Use Tax Regulation 1524 and Business Taxes Law Guide, Sales and Use Tax Annotation 515.0440). Gross receipts do not include charges for installation labor. (Rev. & Tax. Code § 6012(c)(3)).

In the present case petitioners' charges for designing arrangements of balloons and for assembling the arrangements were charges for fabrication labor and for services that were part of the sale of the balloons. Such charges are therefore taxable. It is immaterial that petitioners separately stated these charges or that a customer could have purchased and assembled the balloons themselves. Nor have petitioners given any facts to show that part of the charges were for nontaxable installation labor. Therefore, it is recommended that the labor charges be disallowed in accordance with the determination made by the Return Review Section.

Petitioners contend that they relied upon advice from a Board representative. Revenue and Taxation Code section 6596 provides the only basis for relief from tax and interest where a taxpayer relies upon erroneous advice from the Board. A taxpayer is not entitled to relief under this section unless the taxpayer makes a written request for advice, the request discloses all relevant facts, the Board responds in writing to the taxpayer's request, and the taxpayer relies upon the advice in the Board's written response.

In the present case petitioners did not make a written request for advice and did not receive written erroneous advice. Thus, relief cannot be granted under section 6596.

Recommendation

Deny the petition.

Elizabeth Abreu, Staff Counsel

4/4/94
Date