

**STATE BOARD OF EQUALIZATION**

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October 4, 1976

F--- and S---
XX West XXth Street
--- ---, -- XXXXX

Attention: J--- T. G---

Re: M--- - M--- Corporation
SC --- XX XXXXXX

Gentlemen:

Our district office has requested the legal office to comment upon the meaning of installation and application as those terms are used in Revenue and Taxation Code Section 6012(b)(3) as they apply to the installation procedures described in M--- - M---'s statement.

We have regarded that installation as being only that labor necessary to place, fasten, and adjust property in the particular place designated by the customer. For instance, bolting the machines to the customer's floor, connecting the electrical systems with the customer's building, attaching the machines to other machines of the customer, and adjusting the machines to the particular on-site conditions. Installation does not include assembly or reassembly of the machine. Cf, CCH State Tax Reporter California, paragraph 60.351.464.

When the machines' parts have been shipped to the customer and have never before been completely assembled, that final, on-site assembly by the seller is not regarded as installation or application, and the seller's charges therefore must be included in gross receipts from the sale.

On the other hand, assembly of disassembled parts of machines which were previously fully assembled by the manufacturer but disassembled only for shipment is regarded as a reconditioning. Separately stated charges for that assembly may be excluded from the gross receipts.

An application of the machine would relate to the functional use of it. With printing equipment, an application would be the production of printed matter rather than the bolting of the printing equipment to the customer's floor.

It may be that the "set up" referred to by your client includes aspects of installation, assembly, reassembly and transportation.

The "installation procedures" of M--- - M--- note that two-thirds of the time charged is spent on training the staff of the customer on operating and maintaining the new machinery. This is not a charge for either installation or application of the machinery. If M--- - M--- was to operate or to supervise the actual operation of the machinery, the charge would be for application. However, the training of the purchaser's personnel is about that person's application of the machinery. That notwithstanding, separately identifiable charges for such training which are not mandatory charges by the seller of the machinery but are optional to the customer are distinct from the sale of the machinery and may be excluded from the measure of the tax. On the other hand, if the training is practically or contractually mandatory, then the gross receipts which reimburse the seller's cost of that training may not be excluded from the gross receipts of the equipment.

Very truly yours,

Phillip R. Dougherty
Tax Counsel

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