

M e m o r a n d u m**315.0142**

To: Joseph Young
Headquarters Operations Manager
Headquarters Operations Division

Date: November 28, 2001

From: Carla J. Caruso
Senior Tax Counsel

Telephone: (916) 324-2816
CalNet: 454-2816

Subject: Installation of Parts on New Vehicles

This memorandum is in response to the July 10, 2001, memorandum from William D. Dunn requesting clarification of several annotations on the subject of installation of parts on new vehicles. Specifically, Mr. Dunn attached the D & R for M--- L--- G---, Inc., SR -- XXX-XXXXXX, which concluded that labor to install lift gates on new commercial vehicles within 60 days of registration was not subject to tax. He noted that this conclusion is in apparent conflict with BTLG Annotations 315.0140¹, 435.0418, 435.0470 and with page 10 of Tax Tip Pamphlet number 25, “*Tax Tips for Auto Repair Garages and Service Stations.*” He requested clarification of the 60-day rule and when it applies.

We conclude that the installation of accessories on a new vehicle is subject to tax as fabrication labor, and accordingly, that the 60-day rule for determining whether a car is new should apply in this circumstance. We disagree with the conclusion in the D & R that the labor for installing a “lift gate” in a new vehicle is exempt from tax, i.e., is not fabrication labor, because the lift gate is an accessory.

As a starting point, Revenue and Taxation Code section 6006(b) defines the term “sale” to include the “producing, fabricating, processing, printing or imprinting” of tangible personal property furnished by a customer. “Producing, fabricating and processing include any operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property.” (Reg. 1526(b).) Fabrication does not include the mere repair or reconditioning of tangible personal property. (*Id.*) For example, charges for labor or services used in installing or applying property to a used motor vehicle constitute a repair or installation operation. (See Reg. 1546(a).) Conversely, the installation of parts and accessories on a new motor vehicle

¹ A typographical error lists Annotation 315.0150 (11/13/92) (Low Emission Motor Vehicles and Retrofit Devices), instead of Annotation 315.0140 (“Lift Gates” on Used Trucks) (4/15/57).

constitutes taxable fabrication labor. (Reg. 1526.) This Agency has traditionally regarded a vehicle to be “new” where: 1) the vehicle qualifies as a new vehicle when it is registered with the DMV; and 2) the contract for fabrication operations on the vehicle is entered into within 60 days of the registration date. (See Tax Tip Pamphlet 25, *Tax Tips for Auto Repair Garages and Service Stations* (1997) p. 10.)

Mr. Dunn’s memorandum identifies two annotations discussing taxable fabrication in the context of motor home and van conversions. Annotation 435.0470 (9/8/77) specifies that where a customer provides a van conversion company with a new stock van for conversion into a house car, the conversion operation is a step or series of operations in the creation of a house car and thereby constitutes taxable fabrication. Annotation 435.0418 (12/13/96) also provides that where a customer provides a conversion company with a new bus for conversion into a motorhome, the conversion operation is a step or series of operations in the creation of the motorhome and thereby constitutes taxable fabrication. Each of these annotations provides that the vehicle in question will be considered to have been a new vehicle if the contract for the conversion work is entered into within 60 days of the date the vehicle was first registered with the Department of Motor Vehicles.

In each of these annotations, the labor to produce the completed new vehicle was taxable fabrication labor in accordance with Regulation 1526(a). The labor to convert the new vehicles to a house car or motorhome is a step in the process or a series of operations resulting in the creation or production of tangible personal property within the meaning of Regulation 1526(b). Similarly, the labor to install an accessory, such as a lift gate, in a new vehicle, is a step in the process resulting in the creation or production of tangible personal property, i.e., a vehicle produced as specified by the consumer. While installation of a single accessory is not as extensive an operation as a van or bus conversion, installation of an accessory on a new vehicle nevertheless fulfills the requirements of Regulation 1526(b) to qualify as taxable fabrication labor. The 60-day rule for determining whether a vehicle is new is simply a bright line test for audit purposes that appears to be a reasonable basis for determining the application of fabrication versus installation repair rules.

Mr. Dunn’s memorandum also identifies one annotation outlining a repair operation involving the installation of property on a used vehicle. Annotation 315.0140 (4/15/57) states:

“A ‘lift gate’ is an accessory rather than an integral part of a truck. Separately stated charges for installation labor would not be included in the measure of tax where the installation is made on a used truck.” (Emphasis added.)

In other words, installation of an accessory on a used vehicle is not a step in the creation of the used vehicle, and accordingly, is not taxable fabrication labor within the meaning of Regulation 1526. We believe that this annotation properly analyzed the installation of accessories on a used vehicle and is therefore entirely consistent with Annotations 435.0418 and 435.0470 and page 10 of Tax Tip Pamphlet 25, which state that installation labor on new vehicles is taxable fabrication labor.

We disagree with the analysis in the D & R for M--- L--- G---, and believe it erroneously concluded that the installation labor for a lift gate in a new car was not subject to tax. The D & R adopted portions of the reasoning of Annotation 315.0410, but ignored the critical distinction between the installation of an accessory on a new vehicle and a used vehicle. The D & R, in concluding that the separately stated charges for installation labor should not be included in the measure of tax, reasoned as follows:

“Here, the ‘lift gates’ are merely accessories and not integral parts of the truck. Neither are they essential items to the operation of the vehicles nor do they change the vehicle’s basic nature. As such, petitioner’s installation labor is not a step in a process resulting in the production of tangible personal property or an operation that results in the creation of the desired product, i.e., a vehicle.”

The D & R did not, however, analyze the difference between installing an accessory on a new vehicle and installing an accessory on a used vehicle, apparently assuming that the only significant distinction was that between accessory and integral part of the truck. Installing an accessory on a new vehicle is a step in the creation of the finished vehicle, and accordingly, is taxable fabrication labor under Regulation 1526.

Please contact us if you have further questions.

CJC:ljt

cc: Mr. Jefferson Vest (MIC:85)
Ms. Charlotte Paliani (MIC:92)
Mr. Wayne Mishihara (AB)
Mr. Mike Groover (AB)
Mr. Philip Speilman (MIC:38)
Ms. Lynn Whittaker (MIC:50)
Ms. Leila Khabbaz (MIC:50)
Ms. Janice L. Thurston (MIC:82)
Mr. Warren L. Astleford (MIC:82)