

**STATE BOARD OF EQUALIZATION**

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October 29, 1976

Mr. --- B. B---, Jr.
Executive Secretary
W--- I--- of C---
P. O. Box XXXXX
---, CA XXXXX

Dear Mr. B---:

This is in reply to your letter to Mr. Nunes, September 17, 1976, in which you asked the sales tax application to transactions having various fact patterns in which members of your institute are engaged with regard to doors which are installed in construction contracts.

From your letter, the sequential steps involved with regard to doors in relation to construction contracts are as follows:

1. "Scheduling and detailing," i.e., "reviewing plans and specification for the construction project and listing each door on the job, and determining the proper location for the hinges and the lock or latch set, the type of hinges and lock set, whether or not door closures are involved. This information then has to be detailed in such a manner that the person performing the machining can do it properly to receive the necessary hardware."
2. Acquisition of the doors.
3. Machining of the doors to receive the hardware.
4. Installation of the doors.

In addition to the steps involved, there are the following parties who are or may be involved:

- A. A member of your institute.
- B. A subcontractor of "A".
- C. A second subcontractor of "A".

The above steps and parties combine to create the following possible fact patterns:

- I. "A" alone is involved. That is, a member of your institute does all four steps.
- II. "A" does steps 1, 2, and 4, but subcontracts to "B" to do step 3, the machining of the doors.
- III. "A" contracts to be responsible for final installation, but, in fact, only does steps 1 and 2 and subcontracts to "B" to do steps 3 and 4.
- IV. "A" does steps 2 and 4 and subcontracts to "B" to do steps 1 and 3.
- V. "A" does steps 2 and 4 and subcontracts step 1 to "C" and step 2 and "B".

The law governing the sales tax application to the above fact patterns is found in Revenue and Taxation Code Sections 6006, "Sale" and 6012, "Gross Receipts," and Regulations 1501, "Service Enterprises Generally," and 1521, "Construction Contractors" issued by this Board, together with staff counsel annotated opinions thereon. Copies of the regulations are enclosed.

Applying the law to the patterns you have advanced, our opinion as to the sales application is as follows:

I. "Doors" are given as an example of "materials" in Appendix A of Regulation 1521. Hence, in their installed condition, they become a part of an improvement to real property. Thus, "A", who furnishes and installs "doors" is a construction contractor. See subsection (a)(1)(A) of that regulation.

Therefore, pursuant to subsection (b)(2)(A)1 of the regulation, the sales tax would apply to the sale of the doors to "A" as a consumer thereof.

II. Here there are two taxable transactions. Following the analysis in I, the first taxable transaction is the acquisition of the unmachined doors by "A". The second taxable transaction is the processing, i.e., "machining" of the doors by "B", the doors having been furnished by "A". This is pursuant to Revenue and Taxation Code Section 6006(b), defining as one type of "sale."

"The producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting."

III. In this instance, "A" retains his status as a construction contractor by virtue of his retaining responsibility for installation of the doors, notwithstanding, "B" does the actual installation. See subsection (a)(1)(B)2 of Regulation 1521. Furthermore, both "A" and "B" are considered a unity insofar as the imposition of the sales tax is concerned.

“When a general contractor furnishes ‘materials’ used in improving realty to subcontractor who does actual work, and subcontractor does not actually purchase the ‘materials’ from the general contractor but is merely paid a flat price for the work, the general contractor is regarded as the consumer of the ‘materials.’”
Annotation 190.0980, 10/24/52, B.T.L.G.

Thus the sales tax would apply to the sale of the doors to “A”.

IV. The analysis as to the number of taxable transactions involved in this fact pattern is the same as in II, namely, there are two: the acquisition of the unmachined doors by “A”, and the “machining” of the doors by “B” for “A”. As to the latter transaction, there must be included in the measure of tax, i.e., the “gross receipts,” not only the charges for “machining,” but also the charges for “scheduling and detailing.” This is so in our view because the latter is a service provided by “B” which is a part of “B’s” sale of the “machining” under the “true object of the transaction” test. Revenue and Taxation Code Section 6012(b)(1) includes in “gross receipts” “any services that are a part of the sale.” Regulation 1501 sets forth the true object of the transaction test, which has been further elucidated as follows:

“The basic distinction in determining whether a particular transaction involves a ‘sale’ or a ‘service’ is one of true object of contract; i.e., is the real object sought by the buyer the service per se, or the finished article produced by the service? If the true object of the contract is the service per se, the transactions would be nontaxable even though some tangible personal property is transferred. 515.0040, 5/4/65, B.T. L.G.

V. As in II and IV, there would be two taxable transactions, i.e., the acquisition of the unmachined doors by “A”, and the machining of the doors by “B” for “A”. By virtue of the fact that step I was separately subcontracted to “C”, it is not associated with a sale or a processing considered a sale of tangible personal property. Thus, standing alone, it remains a service, and is not subject to the tax.

Very truly yours,

T. L. Hartigan
Legal Counsel

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