



STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
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September 29, 1994

BURTON W. OLIVER
Executive Director

Mr. J--- F---
B--- H--- & W---
XXX --- ---
---, CA XXXXX-XXXX

Re: B--- H--- & W---

Dear Mr. F---:

This is in response to your June 15th, 1994 letter. You state that you and your wife are starting a window shutter company called B--- H--- and W--- (BHW). Our understanding is that BHW will furnish and install interior wooden window shutters for customers' homes. You ask whether BHW is required to hold a seller's permit for transactions in which it furnishes and installs these shutters.

It is not clear whether you are purchasing materials or the finished shutters. However, based upon our understanding that what you receive is a "finished product," and you pay an installer to install a "finished product" we assume the following: you (1) contract with customers to provide movable interior wooden window shutters for their homes, (2) purchase and sell completed and finished shutters, (3) pay for installation of finished shutters, and (4) bill the customer in a lump sum. We will initially provide a brief overview of the law concerning retail sales and construction contracts, as well as seller's permits. Following that overview of the law on each topic, we will answer what we understand to be your questions.

RETAIL SALES AND CONSTRUCTION CONTRACTS

A sales tax is imposed on all retailers measured by their gross receipts from retail sales of tangible personal property in this state. (Rev. & Tax. Code § 6051.) Gross receipts means the total amount of the sale price of the retail sale of retailers valued in money without any deduction for the cost of property sold, the cost of materials used, labor or service costs, interest

paid, losses or any other expense. Gross receipts do not include the price received for labor or services used in installing or applying property sold. (Rev. & Tax. Code § 6012(a)(1), (2), and (c)(3).) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.)

Regulation 1521, which specifically concerns construction contractors, provides that a construction contract means and includes a contract, whether on a lump sum, time and material, cost plus, or other basis, to erect, construct, alter, or repair any building or other structure, project, development, or other improvement on or to real property. (Reg. 1521(a)(1)(A).)

The term "construction contractor" means any person who, for himself, in conjunction with or by or through others, agrees to perform and does perform a construction contract. (Reg. 1521(a)(2).)

Regulation 1521(a)(8) explains a lump sum contract:

"A contract under which the contractor for a stated lump sum agrees to furnish and install materials or fixtures, or both. A lump sum contract does not become a time and material contract when the amounts attributable to materials, fixtures, labor, or tax are separately stated."

The application of tax to construction contracts depends upon the type of property furnished in the performance of that contract. As relevant here, Regulation 1521 defines materials and fixtures, as those terms apply to construction contractors.

"Materials' means and includes construction materials and components, and other tangible personal property incorporated into, attached to, or affixed to, real property by contractors in the performance of a construction contract and which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of the real property. A list of typical items regarded as materials is set forth in Appendix A." (Reg. 1521(a)(4).)

"Fixtures' means and includes items which are accessory to a building or other structure and do not lose their identity as accessories when installed. A list of typical items regarded as fixtures is set forth in Appendix B." (Reg. 1521(a)(5).)

Venetian blinds are classified as fixtures at Appendix B of Regulation 1521, and since shutters such as the ones you furnish and install are similar to venetian blinds, the board's legal staff has previously taken the position that such shutters are fixtures. Business Taxes Law Guide Annotation 190.2180 (4/26/55), explains:

"The function of an item is frequently important in determining its status as 'materials' or 'fixtures,' as well as its method of attachment. Movable shutters, which serve no function other than venetian blinds or shades, (i.e., rather than as doors, windows, or partitions) and are no more an integral part of the building than a venetian blind or shade, are considered fixtures."

Construction contractors are generally consumers of materials they furnish and install in the performance of a construction contract, and tax applies to the sale of the materials to the construction contractor. On the other hand, construction contractors are the retailers of fixtures they furnish and install, and sales tax applies to those retail sales. Since BHW furnishes and installs shutters, it is the retailer of fixtures, and sales tax applies to the sale price of the interior wooden window shutters that BHW sells to its customer.

Thus, when it agrees to furnish and install an improvement to real property in the form of finished and movable interior wooden window shutters, BHW is a construction contractor. Since the application of tax to construction contracts depends on the type of property furnished and installed in the performance of the construction contract and, since shutters are viewed as similar to venetian blinds which are classified as fixtures, the shutters sold by BHW are considered fixtures. Tax applies to the sale price of the fixtures sold by BHW as follows: if the BHW contract with its customer does not state the sale price of the fixtures, the sale price is the cost price of the shutters to BHW; if BHW purchases fixtures in a completed condition, the cost price is deemed to be the sale price of the fixture to BHW, including excise tax or import duty imposed with respect to the fixtures prior to sale by BHW. (Reg. 1521(b)(2)(B)2.b.) Installation charges are not taxable. However, the retail price of the interior wooden window shutters sold by BHW should include job-site fabrication labor performed on the shutters, and BHW is the retailer of any materials incorporated into the shutters.

SELLER'S PERMITS

A person who desires to conduct business as a seller in California must file an application for a seller's permit with the Board. (Rev. & Tax Code § 6066.) A seller's permit enables a seller to buy tangible personal property, which he or she intends to resell, without paying sales or use tax to the vendor if the seller gives the vendor a resale certificate showing the seller's permit number. (Rev. & Tax. Code § 6092.) The seller's permit obligates the seller, however, to pay state, local, and when applicable, transit district sales and use tax on his or her taxable gross receipts from the sale of tangible personal property. The permit holder is also obligated to file returns on a monthly, quarterly, or annual basis, as the Board instructs.

If a contractor is a seller of fixtures, he is required to hold a seller's permit. (Rev. & Tax. Code § 6066, Reg. 1521(b)(4).) Since BHW is a seller of shutters, which are fixtures, it needs a seller's permit.

Mr. J--- F---

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September 29, 1994
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A copy of the pamphlet "Your California Seller's Permit" is enclosed. If our understanding of the facts is erroneous or you have further questions, feel free to write again.

Sincerely,

Pat S. Hildebrand
Staff Counsel

PSH:cl

Enclosure

cc: Oakland District Administrator
Mr. Joseph D. Young, Union City Office (CHA)