

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

190.2189

In the Matter of the Petition)
for Redetermination of State) DECISION AND RECOMMENDATION
and Local Tax;)
)
C--- C--- LTD.,) No. S- -- XX-XXXXXX-010
C--- N--- & P--- S---,)
)

Petitioner)

The above-entitled matter came on regularly for hearing on Monday, September 26, 1983, in San Diego, California before Robert H. Anderson.

Appearing for Petitioner:

Mr. P--- M. P---
Certified Public Accountant

Mr. H--- E. S---, Jr.
Secretary/Treasurer
C--- C---, Ltd.

Appearing for the Board:

Mr. B. C. Lewis
Senior Tax Auditor
San Marcos Branch Office

Protest

Petitioner was audited for the period from 1-1-79 through 9-30-81, and a determination for tax and interest through 7-28-82 was issued on July 28, 1982.

A reaudit was made on November 11, 1982, which resulted in increasing the measure of tax by \$81,997. This amount is not reflected in the determination as issued.

Petitioner protests tax on sales claimed as exempt measured by \$296,997 per the reaudit increase.

Contentions

The channel letter electric signs and pole electric signs were erroneously considered to be fixtures rather than materials. This interpretation of the sales and use tax law is inconsistent with the published policy of the Board of Equalization as set forth in a June 1980 Tax Information bulletin.

Summary

Petitioner is a corporation that manufactures and sells electrical signs. The company commenced on or about September 1, 1978, and the audit under consideration in this petition is the first one by the Board of Equalization.

Signs are generally classified into three types: (1) pole signs; (2) individual channel letter signs; and (3) wall signs. The audited tax on the sale of wall signs is not in issue in this determination.

The audit was returned to the district by headquarters petition unit because someone in petitions concluded that the exempt portion of pole signs and channel letter signs was too high in comparison with wall signs. Thus, there was a reaudit which resulted in the increased measure.

Petitioner manufactured signs which were furnished and installed under lump sum contracts. All of the signs were considered by the auditor as fixtures although it was recognized that there were some material components.

The auditor noted that a person formerly hired as a C.P.A. made a test which showed that 70% of the lump sum contract price represented the manufactured cost of fixtures plus cost of materials used on jobs. No records to support this test were presented to the auditor, but the percentage was deemed reasonable.

A statistical sample of 300 transactions were selected to test petitioner's exempt labor deductions. Petitioner's recorded exempt labor deductions were verified using the 30% exempt labor percentage developed by the former C.P.A. It was found that for the wall signs, petitioner was usually claiming exempt labor based upon the 30% factor.

However, with respect to the pole and channel letter signs, petitioner reported a lot higher exempt labor ranging from 50% to 67%. Apparently in some cases no fabrication labor was reported. The resulting error percentage projected for the audit period against claimed exempt labor was 26.255%.

Petitioner contends that the channel letter and pole signs should be regarded as "materials" rather than "fixtures" which would exempt all of the labor connected with the jobs.

As noted, petitioner contends that its position is supported by information published in the June 1980 Tax Information bulletin which provides in part as follows:

WHEN SIGNS ARE CONSIDERED STRUCTURES

Signs other than prefabricated fixtures, such as freestanding pylon type signs embedded in the ground or in some other manner attached to real property, are regarded as structures. Construction contractors furnishing and installing such signs are consumers of materials incorporated into the signs.

The bulletin also contains a reference to when signs are considered fixtures, which reads:

Prefabricated wall and roof mounted signs are considered fixtures. If the contract states the sales price at which the fixture is sold, tax applies to that price. If not stated, the sale price will be considered the cost of the fixture to the contractor. If the contractor is the manufacturer of the fixture, the cost price is considered the price at which similar fixtures are sold to other contractors.

Following the audit, petitioner submitted a series of 23 photos to support its argument that (1) pole signs should be classified as structures with no prefabrication, and (2) channel letter signs are not prefabricated in the shop and installed thereafter at the jobsite.

A letter explaining the photos was sent with them. Three photos (Nos. 31, 32 and 33 show the kind of signs petitioner agrees are prefabricated; they are mounted on the side of buildings or are on a pole mounted on the top of buildings. One photo, No. 31, also shows a channel letter sign on the building.) Photos 1 through 11 is a series depicting the actual installation of a channel letter sign step-by-step. Photos 21 through 29 is a series depicting the step-by-step installation of a pole sign.

Mr. P--- contends that a significant portion of the total labor in installing channel letter signs is in attaching materials to the wall in the installation process. And, tests indicate that if the material costs were considered taxable measure (i.e., plywood, metal, plastic channel letters, neon tubes, transformer, housing, conduit and wiring), then only 26% of the selling price of the sign would be taxable. In the channel letter sign photo series he points out that it is obvious that no prefabricated fixture was delivered to the jobsite because the completed sign is the fixture, not the backing, lenses, transformers, etc.

He notes that the auditor allowed an average of 38.5% exempt on twelve (12) channel letter signs examined and 38.13% exempt on fifteen pole signs examined.

Mr. P--- believes that pole signs should be 64.3% exempt using the logic that they are structures and in the case of channel letter signs the exempt portion should be 74%. The latter figure is based on a sample of petitioner's estimate sheets for channel letter jobs.

Conclusions

The choice of words used in discussing "when signs are considered structures" in the Tax Information bulletin was poor because it implies that a pole embedded in the ground with a prefabricated sign attached (pole sign) is a structure. That was not the intent of what was said. Signs that are structures are the large outdoor advertising type signs seen along highways which are periodically changed by papering a new advertisement on the face of the sign. There is a tax counsel opinion in Business Taxes Law Guide, dated 11-7-64, which reads, in part, as follows:

190.0560 Outdoor Advertising Signs. A large outdoor advertising sign erected upon land is a structure, and the contractor is the consumer of the materials used in the sign. Signs attached to buildings are considered fixtures, becoming real property upon being affixed.

There is an unpublished tax counsel memorandum dealing with some aspects of the commercial sign business which points out where there is a sign transaction that does not involve the lease of an installed sign, the "general rules remain as follows:

In a construction contract to furnish and install an advertising pole sign, the pole is treated as materials; the prefabricated sign is a fixture. If the sign is not prefabricated, it is materials."

The foregoing general rule is to be applied to petitioner's pole and channel letter signs. Channel letter signs as depicted in the photo exhibit are definitely not prefabricated. Each letter is fabricated as it is being installed and the installation takes approximately ten major steps before it is complete.

Obviously, letter signs attached to a building that are prefabricated (i.e., the letter is complete in itself like a bronze casting, and all that needs to be done is to affix it to the building), would be a fixture. Each individual letter is a fixture and the fact that no word may be spelled by it does not make it materials since it is in a prefabricated form prior to installation.

The rule in Regulation 1521 relating to prefabricated cabinets is cited under "particular applications". It only applies to prefabricated cabinets; it does not apply to signs.

The channel letter signs illustrated by petitioner in the 1-11 photo series, are not prefabricated and then installed. Mr. P--- points out, the completed sign is a fixture only after it is completed and that occurs only after it is completely installed. Installation labor on the channel letter signs is substantial and should be considered exempt installation of channel letter components; the end result is an improvement to the realty.

Pole signs, on the other hand, involve a substantial amount of construction work prior to the installation of the prefabricated sign and it is obvious that the exempt labor portion of the job would be greater than the labor involved in installing a prefabricated wall or rooftop sign. It would appear that the pole sign job can be divided into two phases; (1) the construction of the pole on which the sign is attached phase (this is analogous to constructing a building on which a wall or roof sign is attached); and (2) the installation of the prefabricated sign to the pole phase (this is analogous to attaching a wall sign to a building).

Recommendation

Redetermine. Reaudit the channel letter signs using petitioner's figures which amount to 64% exempt and 24% taxable. Reaudit the pole signs by auditing phase 1 as a construction contract and phase 2 like the wall or rooftop sign.

Reaudit and adjustments to be made by San Diego District auditing.

Robert H. Anderson, Hearing Officer

Nov. 18, 1983

Date