

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

190.2535

In the Matter of the Petition for )	
Redetermination of State and Local )	DECISION AND RECOMMENDATION
Use Tax; )	OF HEARING OFFICER
)	
F--- S--- Corporation )	
)	Account No. SS -- XX XXXXXX
<u>Petitioner.</u> )	

The above-entitled matter came on regularly for hearing on Thursday, February 1, 1973 at 2:00 p.m. in Downey, California.

Appearances:

For Petitioner: Mr. D--- L---, Vice President

For Board of Equalization: Mr. C. Buch, Supervisor  
Long Beach District

Mr. J. K. Elliott, Auditor  
Long Beach District

Protest

Pursuant to an audit covering the period from 10-01-68 through 9-30-71, and a determination issued on June 15, 1972, Petitioner protests liability for use tax measured by \$51,000 representing the purchase of fabrication labor on steel furnished by Petitioner.

Contentions

Petitioner purchased fabrication labor in the best interest of all concerned to meet scheduled deadlines of a construction contract; and it is not the intent of the law to add additional costs to the corporation due to misfortune in having to meet scheduling that is or cannot be controlled by the corporation.

Summary

Petitioner is a corporation that engages in business as a steel construction contractor.

The audited liability being protested arose as a result of a construction contract deadline which Petitioner was unable to meet without the purchase of some fabrication labor on steel into trusses which ultimately were used to improve real property under Petitioner's construction contract.

Mr. L--- stated that due to other workload requirements the steel trusses could not be fabricated in the Petitioner's plant and because of the schedule and deadline the steel had to be sent out to be fabricated.

He pointed out that the contract bid was computed on the basis that F--- S--- would do its own fabrication of the trusses.

The auditor pointed out that no tax was charged on the fabrication because Petitioner issued a purchase order marked "for resale" to the firm that did the fabricating and that the firm had Petitioner's resale certificate on file so there was no basis on which the state could assert the tax against the seller of the fabrication labor.

Conclusion

Section 6006 of the Revenue and Taxation Code defines sale to mean and include "the processing, 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."

Petitioner issued a resale certificate for the purchase of the fabrication of its steel and the steel trusses were not resold; they were consumed. Accordingly, use tax applies to the price paid for the fabrication and there is no basis in the Sales and Use Tax Law on which any exemption applies under the circumstances.

Recommendation

Redetermine without any adjustment to the audited liability.

_____	3/22/73
Hearing Officer	Date

REVIEWED FOR AUDIT:

_____	_____
Principal Tax Auditor	Date