

**STATE BOARD OF EQUALIZATION**

(916) 445-5550

March 8, 1990

Mr. D--- R. G---
G--- S---
XX E. --- ---
---, CA XXXXX

Re: S- -- XX-XXXXXX

Dear Mr. G---:

This is in response to your letter dated January 22, 1990, which we received February 8, 1990.

You make large styrene (foam) letters which are glued onto buildings. You have included a picture showing these letters attached to a building. They appear to be about one to three feet in height. You state that the letters can be removed if done carefully. You ask whether sales tax applies to your charges.

A retailer owes sales tax on the retailer's retail sales of tangible personal property. (Rev. & Tax. Code § 6051.) The retailer may collect reimbursement from the purchaser for the retailer's sales tax liability if pursuant to contract. (Civ. Code § 1656.1.) A construction contractor is a consumer of materials which the contractor furnishes and installs in the performance of a construction contract. (Reg. 1521(b)(2)(A)1.) This means that sales or use tax applies with respect to the sale of materials to or the use of the materials by the contractor and sales tax does not apply to the contractor's charge to the customer. A construction contractor is a retailer of fixtures furnished and installed in the performance of a construction contract, and sales tax applies to the contractor's sale of the fixtures. (Reg. 1521(b)(2)(B)1.)

"Fixtures" include items which are accessory to a building or other structures and which do not lose their identity as accessories when installed. (Reg. 1521(a)(5).) The signs which you describe and which are shown in the photograph you have furnished us appear to be fixtures within this definition. Further, Appendix B to Regulation 1521, which lists items typically regarded as fixtures, includes signs. We conclude that the signs you furnish and install are fixtures.

Since you are furnishing and installing fixtures, sales tax applies to your charges for those signs, and you may collect sales tax reimbursement from your customers if your contracts so provide. If you purchased the signs in a completed condition, the measure of your sales tax would be your cost. However, I assume that you manufacture the fixture. Under such circumstances, your "cost price" of the fixture, which is the amount which is subject to sales tax, is determined as follows:

"If the contractor is the manufacturer of the fixture, the cost price is deemed to be the price at which similar fixtures in similar quantities ready for installation are sold by him to other contractors.

"If similar fixtures are not sold to other contractors ready for installation, then the cost price shall be deemed to be the amount stated in the price lists, bid sheets or other records of the contractor.

"If the sale price cannot be established in the above manner and the fixture is manufactured by the contractor, the cost price shall be deemed to be the aggregate of the following:

- [1] Cost of materials, including such items as freight-in and import duties,
- [2] Direct labor, including fringe benefits and payroll taxes,
- [3] Specific factory costs attributable to the fixture,
- [4] Any manufacturer's excise tax,
- [5] Prorata share of all overhead attributable to the manufacture of the fixture, and
- [6] Reasonable profit from the manufacturing operations which, in the absence of evidence to the contrary, shall be deemed to be 5 percent of the sum of the preceding factors.

"Jobsite fabrication labor and its prorated share of manufacturing overhead must be included in the sale price of the fixture. Jobsite fabrication labor includes assembly labor performed prior to attachment of a component or a fixture to a structure or other real property." (Reg. 1521(b)(2)(B)2.b.)

I note that your cost price, calculated in the manner described above, is the amount subject to tax, and not your entire charge for furnishing and installing the signs. Further, I note that you may purchase for resale the property which you manufacture into your signs. This means that you do not have to pay sales tax (reimbursement) to your supplier when you purchase that property. In

order to buy that property without paying tax, you may issue your supplier a resale certificate in the form set forth in Regulation 1668, a copy of which is enclosed. Also enclosed for your information is a copy of Regulation 1521.

If you need assistance regarding what type of property you may purchase for resale or assistance in calculating the amount of your charges which are subject to sales tax, please contact our Merced District Office. If you have other questions, feel free to write us again.

Sincerely,

David H. Levine
Tax Counsel

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Enclosures