

STATE OF CALIFORNIA

BOARD OF EQUALIZATION

345.0010

BUSINESS TAXES APPEALS REVIEW SECTION

In the Matter of the Petition)
 for Redetermination Under the) DECISION AND RECOMMENDATION
 Sales and Use Tax Law of:)
)
 W--- C. & I--- M--- Y---) No. SY --- XX-XXXXXX-010
)
)
Petitioner)

The Appeals conference in the above-referenced matter was held by Staff Counsel Susan M. Wengel on February 16, 1994 in Sacramento, California.

Appearing for Petitioner: W--- Y---
 Petitioner

Appearing for the Sales and Use Tax Department: Larry Brammer
 Supervising Tax Auditor

Protested Item

The protested tax liability for the period July 1, 1989, through March 31, 1992 is measured by:

<u>Item</u>	<u>State, Local and County</u>
Disallowed Labor Deductions	\$ 47,997

Contentions

1. Petitioners' charges for cutting and serging sweatshirts are nontaxable labor charges.
2. Petitioners may have relied upon oral erroneous advice from a local Board office.

Summary

Beginning in 1976, petitioners owned and operated a fabric store. In June 1985, they closed the fabric store and opened a store known as the K--- B---, where they sold yarn, needles, and other knitting paraphernalia.

In 1986 or 1987 petitioners started knitting classes in the evenings. Petitioners charged \$22.00 for the classes. In addition, petitioners performed repair work on existing clothing of their customers.

During the audit period petitioners hand knitted sweaters for customers who purchased yarn from them. They charged \$75.00 to knit a sweater. Recently, however, petitioners ceased offering the knitting services because they found that it was too time consuming to correct sizing problems. Petitioners now refer customers who want this type of service to other individuals.

Petitioners also sold sweatshirts at their store. Some customers purchased the sweatshirts and made their own alterations to the sweatshirts. Sales to these customers are not at issue. Other customers purchased the sweatshirts from petitioners and requested petitioners to cut the sweatshirts around the neckline and serge the cut edges to prevent ravelling. By cutting and serging, petitioners made additional money because customers would purchase yarn which each customer would knit and attach as a new neckline to the sweatshirt. In such transactions, petitioners charged customers a separate amount for the sweatshirt and the yarn, for which tax reimbursement was charged and reported. A separate \$6.00 charge was made for cutting and serging for which no tax reimbursement was charged.

Some customers purchased sweatshirts at other stores, including the H--- store at the factory outlets in T---, and paid petitioners \$6.00 to cut and serge them. Many of those sweatshirts had been previously worn. Again, petitioners did not charge or collect tax reimbursement on the \$6.00 charges.

Petitioners did not retain records for the period in issue, but they estimate that approximately three-quarters of the sweatshirts they cut and serged were purchased from them and that about one-quarter were purchased from other stores.

Petitioners claimed their charges for the knitting classes, for repair labor, for hand knitting sweaters, and for cutting and serging sweatshirts as exempt labor. The Board's Return Review Section used the second quarter of 1991 as a test period and disallowed the deductions for the charges for hand knitting and cutting and serging.

Petitioners called either the South Tahoe or the Placerville office in 1985 or 1986 to inquire about repair charges when customers brought in something that needed to be reknitted or needed a button sewed on. Petitioners were told that such charges were nontaxable. In 1989 a customer asked petitioners whether the \$6.00 cutting and serging charge was subject to tax. Petitioners called back to one of the Board offices but cannot remember the specific advice that was given or how they specifically phrased their question.

Analysis and Conclusion

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers from retail sales of tangible personal property. A sale includes any transfer of title of tangible personal property for a consideration and the producing, fabricating, or processing of tangible personal property for a consideration for consumers who furnish the materials used in producing, fabricating, or processing. (Rev. & Tax. Code § 6006(a) and (b).)

Sales tax is measured by "gross receipts" which means the total amount of the sale price, including all services that are a part of the sale, without any deduction for the cost of materials used, labor or service cost, or any other expenses. (Rev. & Tax. Code § 6012.)

Regulation 1524(b)(1)(A) and (B) in applying these statutes to alterations made to new clothing provides that:

" 'Alteration', as herein used, means and includes any work performed upon new clothing to meet the requirements of a customer, whether the work involves the addition of material to the garment, the removal of material from the garment, the rearranging or restyling of the garment, or any other change therein.

"(B) Application of Tax.

"1. In General. Charges for alterations to new clothing are subject to tax. It is immaterial whether the charges for the alterations are separately stated or are included in the price of the garment. It also is immaterial whether the alterations are performed by the seller of the garment or by another person."

In the present case, petitioner agrees that the charges for hand knitting the sweaters are taxable. Such charges were simply part of the costs of producing the sweaters and are taxable whether a customer purchased the sweater after it was completed or purchased the yarn first and then gave the yarn to petitioner for knitting. Likewise, the charges for cutting and serging new sweatshirts are charges for alterations which are subject to tax.

Charges for repair labor, however, generally are not subject to tax. (See Regulation 1546(b).) Thus, charges to mend used clothing are not taxable. The charges for cutting and serging used sweatshirts, therefore, represent repair labor which is not subject to tax. Petitioners' have stated that most customers liked to wash a sweatshirt before they brought it into petitioners' store to be cut and serged. Based on this evidence, we conclude that most of the sweatshirts purchased at other stores were used when brought to petitioner for cutting and serging. It is recommend that the disallowed labor charges for the test period be reduced by \$560.00 which is 23 percent of the total cutting and serging charges. (See Exhibit "A" attached.)

Revenue and Taxation Code section 6596 provides the only basis for relief from tax and interest where a taxpayer relies upon erroneous advice from the Board. A taxpayer is not entitled to relief under this section unless the taxpayer makes a written request for advice, the request discloses all relevant facts, the Board responds in writing to the taxpayer's request, and the taxpayer relies upon the advice in the Board's written response.

Because petitioners' request was oral and because petitioners could not remember the specific advice that was orally given to them by their local Board office, it regrettably cannot be determined if they were given erroneous advice. Therefore, we cannot recommend relief under section 6596.

Recommendation

Redetermine the tax in accordance with the views expressed herein.

Susan M. Wengel

March 16, 1994
Date