



STATE BOARD OF EQUALIZATION

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June 26, 1995

Ms. L--- C---
C---, -. F--- E---, Inc.
XXX North --- Street
---, California XXXXX

Re: SS --- XX-XXXXXX

Dear Ms. C---:

This is in response to your letter dated May 18, 1995 regarding the application of tax on the sale of an electrical service panel and related charges for personnel training and equipment testing.

You state that your company will purchase a large service control panel which includes several float switches, cables, manuals, and documentation that the unit has been assembled and tested in the shop. We understand that this unit will be delivered to a jobsite for installation by your company. You also state that your company will obtain a separate quote from either the seller of the control panel or another third party to test and adjust the control panel as well as provide a training session to jobsite personnel on how to operate the unit. We understand your letter to ask how tax applies on your company's sale of the service control panel as well as the separate testing/training charge which it passes on to its customers.

Discussion

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) Gross receipts include all amounts received with respect to the sale, with no deduction for the cost of the materials, service, or expenses of the retailer passed on to the purchaser, unless there is a specific statutory exclusion. (Rev. & Tax. Code § 6012.)

C---, -. F--- E---, Inc.'s ("CJFE") installation of the electrical service panel at the jobsite makes it a construction contractor within the meaning of subdivision (a)(2) of Regulation 1521, a copy of which is enclosed. A construction contractor is a consumer of materials furnished and installed pursuant to the construction contract, and the sale of those materials to the contractor is the retail transaction subject to sales or use tax. (Reg. 1521(b)(2)(A).) Except when performing a construction contract for the United States Government, a construction contractor is the retailer of fixtures furnished and installed pursuant to the construction contract, meaning that the sale of the fixtures to the construction contractor is a sale for resale. Tax applies to the sale by the construction contractor to its customer. (Reg. 1521(b)(2)(B).)

Regulation 1521 defines "materials" and "fixtures" for purposes of this analysis. Fixtures are items which are accessory to a building or other structure and do not lose their identity as accessories when installed. (Reg. 1521(a)(5).) For purposes of this opinion, we assume your categorization of the service control panel as a fixture is correct. (If your categorization and our assumption are incorrect, our opinion would be different.) Thus, as the construction contractor furnishing and installing the service control panel in question, you are regarded as having purchased it for resale from your vendor. This means that the sale of the panel from the vendor to you is not subject to tax. Rather, the sale of the service panel from you to your customer is a retail sale subject to tax as set forth in Regulation 1521(b)(2)(B)2. That is, tax applies on CJFE's stated sales price of the panel to its customer or, if not stated, on the cost price of the panel to CJFE as set forth in subdivision (b)(2)(B)2 of Regulation 1521. This cost price includes the sale price of the panel to CJFE, the charge for any additional fabrication performed by another person, and the cost in accordance with the formula in the regulation for any fabrication CJFE performs prior to installation. The remaining issue is whether the testing of the panel and the training of personnel are regarded as part of the fabrication of the panel.

As you know, jobsite fabrication labor and its prorated share of manufacturing overhead must be included in the sale price of a fixture to your customer. (See Reg. 1521(b)(2)(B)2.b.) Jobsite fabrication labor includes assembly labor performed prior to attachment of a component or fixture to a structure or other real property. (*Id.*) We understand that your vendor or another wholly separate company provides testing, adjustments, and jobsite training on how to operate the panel sometime after your company has installed the panel at the jobsite. If so, we do not regard the testing, adjusting, and training provided by your vendor (or the other separate company) as jobsite fabrication. The charges for that testing and training are therefore not part

of CJFE's taxable gross receipts from the sale of the service panel. (Reg. 1521(b)(2)(B)2.b; see also Reg. 1546, Business Taxes Law Guide Annots. 315.0340 (9/21/50), 435.0520 (3/19/52).) However, where your company's vendor (or another separate company) undertakes activities other than testing, adjusting, and training which amount to fabrication to the service control panel (e.g., assembly), charges for such activities are subject to tax if they are performed any time before the panel becomes an improvement to real property.^{1/}

If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:es

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Enclosure: Reg. 1521

cc: -- - District Administrator

^{1/} Your interpretation in your letter that jobsite fabrication means assembly labor performed "until the installed unit is plugged in" is unclear. Your interpretation is correct if the term "plugged in" refers to the attachment of the service panel to real property such that the panel becomes an improvement to that real property. However, your interpretation is incorrect to the extent that "plugged in" refers to the mere connection of the service panel to electrical power, or to the attachment of other tangible personal property to the service panel prior to its becoming installed as an improvement to real property.