

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-2641

August 14, 1979

Mr. B--- G. D---
D--- M--- H--- Co.
XXXX --- Boulevard
--- ---, CA XXXXX

Re: SR – XX-XXXXXX

Dear Mr. D---:

This is in reply to your letter of July 24, 1979 which asks us to clear up a point raised in our July 18, 1979 opinion to you on the application of sales tax to certain labor charges. The point in question concerns the combination of fabrication and installation described in Item 4, Page 2 of our July 18, 1979 opinion.

In the fabrication and installation of shelving, racks, and lockers, it has been your opinion that, when bolting to the floor is performed after assembly, and the bolting labor is less than the fabrication labor, all the labor is taxable. You are sure that you have read in reports that a combination of fabrication and installation labor is taxable unless the fabrication and installation labor are billed separately.

In our opinion, installation labor is never taxable. Section 6012(c)(3) of the Revenue and Taxation Code provides that "Gross Receipts" (the amount on which you pay tax) do not include "the price received for labor or services used in installing or applying the property sold." There is no requirement that the charge for installation be separately stated in order to be nontaxable.

Nevertheless, as a practical matter, many tax advisers state that installation charges should be separately stated, because all tax deductions must be supported by records. If the retailer must keep records to substantiate any nontaxable installation charges he deducts, then such records make it relatively easy to bill the installation charges separately. Of course, the retailers billing installation charges separately are, for the most part, those retailers whose installation charges are a significant part of their total charges. For them to try and ignore the nontaxability of installation charges would lead to excess tax reimbursement and nothing but complaints from their customers; for them, a separate statement of installation is a practical necessity.

Mr. B--- G. D---
D--- M--- H--- Co.
SR – XX-XXXXXX

-2-

August 17, 1979

315.0299

For a firm such as D--- M---, the amount of installation labor may be so insignificant that, as a matter of cost accountancy, it does not increase the total charge made. If the amount spent on installation labor does increase the total charge, then a tax conscious customer can correctly protest a tax on installation labor. Such a customer could join the Board as a defendant in an action to force a refund of excess tax reimbursement. Javor v. State Board of Equalization, 12 Cal. 3d 790. It is only the insignificant amounts of tax as to each customer that prevents such actions.

Turning to another point stated in your letter, you have concluded that “we can now do a little bolting to the floor and the entire labor is nontaxable.” This is true only if the “little” bolting is of a part of the shelf, rack, or locker to the real property, and then the rest of the labor is attaching the remaining parts to the part already bolted to the real property. As you state that no one you know puts up shelving, racks, or lockers in this manner, the assembly (fabrication) in your industry is always subject to tax.

In fact, the only time assembly labor is not taxable is when it occurs as part of installation. The general rules are: 1) installation labor is always nontaxable, whether separately stated or not; 2) assembly labor is always taxable, whether separately stated or not; and 3) a combination of the two which results in an item fully assembled and installed on real property is always nontaxable, whether separately stated or not.

If you have further questions, feel free to write me.

Sincerely,

Donald J. Hennessy
Tax Counsel

DJH:po