

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

435.0145

In the Matter of the Petition )  
for Redetermination Under the ) DECISION AND RECOMMENDATION  
Sales and Use Tax Law )  
)  
E. A. S--- CO., INC. ) No. SS -- XX XXXXXX  
)  
Petitioner )

The above entitled matter came on regularly for hearing on Wednesday, March 3, 1976, in Hollywood, California. Joseph Manarolla, Hearing Officer.

Appearing for Petitioner:

Mr. A--- C---, Certified Public Accountant  
Mr. R. L. T---, Certified Public Accountant  
Mr. R. K---, General Manager

Appearing for the Board:

Mr. F. M. Paisley, Supervising Auditor

Protested Item  
(Period 1/1/72 to 12/31/74)

	<u>Measure of Tax</u>
A. Labor sales overstated	\$53,713

Petitioner's Contentions

The labor sales disallowed constitute exempt installation labor.

Prior audit accepted this type of labor as exempt installation labor.

Summary of Petition

Petitioner is a corporation engaging in the furnishing and installing of market equipment, including meat monorail systems, adjustable shelving, and overhead conveying systems.

The protested item involves labor charges in connection with shelving delivered to the buyer in knocked-down condition (steel pipe uprights, brackets, shelf frames, and steel wire trays).

The questioned shelving generally is furnished in conjunction with the sales and installations of other food handling equipment under a single order. For example, the job may consist of the furnishing and installing of a meat rail system, scales, shelving, and miscellaneous equipment.

After delivery to the customer's place of business, the shelving is assembled prior to its being placed in its final location. The shelving generally is free standing.

Petitioner's representative states that, because the individual components of the shelving are treated with a hot galvanized dip, factory assembly is necessary to make sure the components fit, since galvanizing sometimes causes warping of the frames or other undesirable effects. The shelving is then disassembled and shipped to the jobsite and reassembled.

The auditor has regarded the charges for jobsite assembly as a part of the sale of the shelving and subject to the tax.

Petitioner contends such labor should be considered installation labor exempt from tax.

#### Analysis and Conclusions

Gross receipts from the sale of tangible personal property do not include the price received for labor or services used in installing or applying the property sold (Section 6012, Revenue and Taxation Code).

Accordingly, where the charges for labor can be identified as applicable to the installation of the property, such charges are not subject to the tax. However, where the charges are for labor which can be identified as an operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property, such charges are regarded as for producing, fabricating, or processing of tangible personal property and includible in the gross receipts from the sale of the property (Regulation 1526).

In the instant case, the shelving was reassembled at the jobsite prior to being placed in its final location as a free standing unit (without attachment to the realty). Under such circumstances, the assembly labor does not qualify as exempt installation labor.

Petitioner has cited Tax Counsel ruling annotated at 435.0140, Business Taxes Law Guide as support for its position. That ruling provides as follows:

“Reassembling Tangible Personal Property That Has Been Previously Assembled. When tangible personal property is manufactured and completely assembled at the retailer’s plant, then disassembled for shipment and reassembled at the buyer’s place of business, the reassembling constitutes a reconditioning of the property rather than fabrication. Accordingly, separately stated charges for such reassembly are not subject to tax if title to the tangible personal property passed to the buyer prior to its reassembly and if the buyer was not required to hire the seller to do the reassembly.” \

Petitioner’s method of operation is not in conformance with the requirements for exemption as set out in the above ruling. The charges for the labor are not separately stated; there is no showing that title to the property passes to the buyer prior to the assembly and reassembly is a contractual obligation of the seller under the agreement to furnish and install.

Petitioner’s contention that installation labor was not questioned in the prior audit provides no basis for the perpetuation of improper reporting of tax legally due.

Recommendation

The determination be redetermined without adjustment

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Joseph Manarolla, Hearing Officer

4/18/76  
\_\_\_\_\_  
Date