



STATE BOARD OF EQUALIZATION

916-445-5550

December 7, 1989

Re: Account No. X-----

Dear X-----,

This is in response to your letter dated November 8, 1989 in which you state:

"We have a customer that bought a piece of equipment. We were hired to take this piece of equipment down in sections. It was then delivered to our customer's plant.

"We were then hired to reinstall this same piece of equipment at the customer's plant. However, we were not able to install the piece of equipment as it was due to city regulations. The city said we could not install the piece as is because of its height. Therefore, we had to take the piece of equipment and lower it down to the allowable height. In order to do this some connections had to be fabricated in our shop and then installed at the job site.

"This now brings us to what is subject to sales tax:

- "1. Installation of equipment.
- "2. Installation of new equipment to lower to allowable height.
- "3. Manufacture new equipment to lower the equipment.

"I would also like to note that the equipment will not perform anymore than it was designed for.

"We understand that new equipment manufactured in our shop, labor and material, used to lower the original piece of equipment is taxable. Also, installation of new equipment is taxable, and installation of old equipment is not taxable."

A retailer's retail sale of tangible personal property in California is subject to sales tax measured by the retailer's gross receipts from the sale. (Rev. & Tax. Code 6051.)

"Sale" includes the fabricating of tangible personal property for consumers who furnish the materials used in the fabrication (Rev. & Tax. Code 6006(b)), and the charge for such fabrication is subject to sales tax. On the other hand, the repair of tangible personal property is not a sale and the charge for repair labor is not subject to sales tax. (Reg. 1546.)

Reconditioning used property to restore the property to its previous condition suitable for its originally intended use is a repair. (Business Taxes Law Guide Annots. 435.0160 (9/21/65) (repair of used aircraft), 435.1680 (1/12/50) (repair of used television sets).) On the other hand, work performed upon new property constitutes a step in the processing of the finished item and is taxable fabrication. (Business Taxes Law Guide Annots. 435.0420 (8/25/66) (new shoes), 435.0440 (1/24/51) (new tank truck), 435.0470 (9/8/77) (new van).) Further, taxable fabrication labor includes work performed upon used property when that work creates property suitable for a new and different use. (Business Tax Law Guide Annots. 435.0260 (4/9/57) (fabrication when pattern cut in used dye makes it suitable for new and different use), 435.0380 (11/5/64) (welding used pipe to make its length greater is fabrication because beyond restoration).)

An analogy to your situation is the alteration of clothes. The alteration of used clothing generally constitutes a repair. However, when a person purchases a new pair of pants that is too long and takes those pants to another person for alterations, those alterations constitute taxable fabrication as a step in the manufacturing of property suitable for the purchaser's use. (See Duffy v. State Board of Equalization (1984) 152 Cal.App.3d 1156.) In your situation, the equipment as originally purchased was too tall and had to be shortened to an acceptable height just as a new pair of pants that is too long must be shortened to an acceptable length. We conclude that, assuming the equipment was new, your work to shorten the equipment constitutes taxable fabrication and your charges for parts and labor to effect that shortening constitute taxable gross receipts. If the equipment was used, and if your work did not create property suitable for a different use than prior to your work, your work would be regarded as repair and subject to tax as provided in Regulation 1546.

It appears that you made three basic charges to your customer: a charge for dismantling the equipment; a charge for lowering the equipment to the acceptable height (your numbers 2 and 3 quoted above); and a charge for installation of the lowered equipment (your number I quoted above.) When tangible personal property is manufactured and completely assembled, then disassembled for shipment and reassembled at the buyer's place of business, the reassembling constitutes a reconditioning of the property rather than fabrication. (Business Taxes Law Guide Annot. 435.0140 (11/14/67).) From the facts you state, we assume that your disassembly and reassembly was necessary without regard to the need to shorten the equipment. That is, we assume that the disassembly was for purposes of shipping and not because of the need to shorten the equipment, and that the equipment would have been shortened without disassembly had the equipment not been shipped. Based on these assumptions, we conclude that your charges for disassembly and reassemble are not subject to sales tax. If

these assumptions are incorrect, and if the shortening constitutes taxable fabrication, your disassembly and reassembly would also be part of that taxable fabrication.

In your letter quoted above, you state your understanding that installation of new equipment is taxable while installation of old equipment is not taxable. This is incorrect. Charges for installation are not subject to tax whether the property is new or used. (Rev. & Tax. Code 6012(c) (3).) The only question would be whether the work actually constitutes installation, or instead constitutes fabrication. We assume that after you completed the shortening and reassembly process, the installation about which you inquire involved simply the attachment of the equipment to its final location. If this assumption is correct, your charges for that installation are not subject to sales tax whether the equipment is new or used.

A copy of Regulation 1546 is enclosed for your information. If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Tax Counsel

DHL:wak

bc: San Jose District Administrator