

435.1477

M e m o r a n d u m

To : Mr. Kenneth W. Barrow
Return Review Section (MIC:35)

Date: August 19, 1994

From : Kelly W. Ching
Staff Counsel

(916) 322-2976
8-492-2976

Subject: **The L--- T--- Shoe Repair**
SR – XX-XXXXXX

This is in response to your memorandum of July 11, 1994 regarding the application of tax to the charges for labor used in "installing" dance taps or protective taps on new shoes or previously worn shoes.

In the letter you forwarded to us from K--- L--- of L--- T--- Shoe Repair, she states that L--- T--- "installs dance taps" on shoes, and that the customer provides the shoes and the taps. As explained below, the labor performed by L--- T--- may be installation or repair labor, or it may instead be fabrication labor. Installation or repair labor charges are not taxable. (Rev. & Tax. Code § 6012(c)(3), Reg. 1546.) Fabrication labor charges, on the other hand, are taxable. (Rev. & Tax. Code §§ 6006(b), 6012, 6051.)

"Sale" means and includes the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing, or imprinting. (Rev. & Tax. Code § 6006(b).) Producing, fabricating, and processing include any 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. Charges for such producing, fabricating, and processing are subject to sales tax. (Rev. & Tax. Code §§ 6012, 6051.) The terms do not include operations which constitute merely the repair or reconditioning of tangible personal property to refit it for the use for which it was originally produced. (Reg. 1526(b).) Charges for such repair or reconditioning are not subject to sales tax.

We have previously concluded that the altering of new shoes by adding heel inserts, replacing rubber heels with leather heels or stretching the shoes is a fabrication and that the charge for that fabrication is subject to sales tax. (Business Taxes Law Guide Annotation

435.0420 (8/25/66).) Orthopedic correction work performed on new shoes is also taxable fabrication labor. (BTLG Ann. 435.1480 (12/17/54).) Similarly, when L--- T--- puts dance or protective taps on new shoes, its actions qualify as taxable retail sales under subdivision (b) of section 6006. This means that L--- T--- owes sales tax measured by the total amount of its charges for "installing" dance or protective taps on new shoes.

Unlike labor to alter new items, labor to alter used items is not necessarily fabrication. Instead, such labor may qualify as repair labor or installation labor. (Reg. 1546.) Charges for repair labor or installation labor are not taxable.

When determining whether labor to alter used property is fabrication labor or repair or installation labor, we must look at whether or not the property was changed into an item suitable for a new or different purpose. (BTLG Ann. 435.0260 (4/9/57).) If the item is suitable for a new and different purpose after the alteration, then the labor is taxable fabrication labor. If the alteration restores the item to its previous condition or does not produce an item suitable for a new and different purpose, then the labor expended is nontaxable repair or installation labor.

For example, if a charge is made for altering previously worn shoes by adding heel inserts, replacing worn heels, or stretching the shoes, the alteration charge constitutes a nontaxable repair operation because the shoes will still be used as shoes after the alteration has been performed. (BTLG Ann. 435.0420 (8/25/66).) Since the used shoes will not be suitable for a new and different purpose and will still be worn as shoes by the customers after L--- T--- puts dance or protective taps on them, the labor is nontaxable installation labor and not fabrication labor.

Regulation 1546 explains the application of tax to charges for parts and materials that repairers furnish in connection with repair work. Since Ms. L--- states in her letter that the customer provides the shoes and the taps and that L--- T--- provides no parts or materials, L--- T---'s charges for adding taps to used shoes are not taxable.

In summary, labor used to add taps to new shoes is taxable fabrication labor. L--- T--- owes sales tax on its charges for such fabrication labor. When L--- T--- adds taps to previously worn shoes, however, the labor is nontaxable installation labor. If you have further questions, please feel free to write again.

KWC:cl

cc: --- District Administrator