

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Claim for Refund)	
Under the Sales and Use Tax Law of:)	
ELIZABETH SHUTTERS, INC.)	Account Number SR EH 100-565493
Claimant)	Case ID 538185
)	Colton, San Bernardino County

Type of Business: Manufacturer and installer of customer shutters

Claim Period: 10/01/05 – 09/30/08

<u>Item</u>	<u>Claimed Refund</u>
Over-reported tax on construction contracts	Unstated

UNRESOLVED ISSUE

Issue: Whether the amount of overpaid tax is greater than the amount established by audit. We find that the actual overpayment has already been refunded, and that no further refund is warranted.

Claimant is a manufacturer of custom shutters for sale to homeowners and prime contractors. It also furnishes and installs the shutters under lump sum construction contracts. During the period October 1, 2005, through June 30, 2007, claimant collected sales tax reimbursement on its entire lump sum contract price for construction contracts, and reported the full amount of those contracts as taxable retail sales. Thus, for that period, claimant had collected excess tax reimbursement, which it had reported to the Board. Claimant then became aware that, for its lump sum construction contracts, tax applies to the cost of materials and to the selling price of fixtures, rather than to the full contract amount. Accordingly, claimant stopped collecting sales tax reimbursement with respect to its lump sum construction contracts and, for the period July 1, 2007, through September 30, 2008, computed the taxable measure it reported for those contracts by applying 52 percent to the total contract amount, a percentage it had computed based on a review of a few contracts.

In the audit, the Sales and Use Tax Department (Department) found that the shutters were fixtures, and for the period July 1, 2007, through September 30, 2008, the retail selling price of the fixtures as computed by the Department exceeded claimant’s reported taxable measure for contracts by

1 \$1,008,259. Before a Notice of Determination was issued, claimant protested the audit findings, and
2 the Department prepared a revised audit. In the revised audit, the Department made various revisions
3 to its computation of the taxable measure related to claimant's construction contracts. For example, in
4 its revised computation of the selling price of shutters, the Department did not include the general and
5 administrative overhead costs. Also, The Department found that, while the shutters used in windows
6 are fixtures, the framing, shutter doors, and shutter wall partitions should be regarded as materials,
7 with the applicable tax measured by cost rather than retail selling price. Using its revised computation
8 of taxable measure, the Department found that claimant had overstated its reported taxable measure
9 related to construction contracts by \$233,347 for the period July 1, 2007, through September 30, 2008.
10 After offsetting understatements in other areas, there remained a net overpayment, and the Department
11 has thus issued a refund of \$10,702.12 for the audit period.

12 Claimant argues that the amount of overpayment was greater than the amount refunded because
13 the shutters it manufactures and installs should be classified as materials, rather than fixtures, with tax
14 due on the cost of materials rather than on the selling price. Claimant asserts that the relevant question
15 to answer in deciding whether the shutters are fixtures or materials is the ease and relative cost of
16 detachment of the shutters and re-attachment to other realty. Claimant states that it is impractical to
17 remove the shutters from the realty because of the damage that would result to both the shutter and the
18 realty. In addition, claimant disputes the Department's comparison of its shutters to Venetian blinds,
19 arguing that the shutters require installation by a professional with significant experience.

20 The shutters at issue are designed as window or skylight coverings. Although the shutters
21 might be considered permanent (impossible to remove without some damage to the window frame or
22 the shutter itself), the shutters are merely accessory, not necessary, to the integrity of the window, the
23 window opening, or the real property surrounding them, and maintain their identity as shutters after
24 installation. Accordingly, we find that the shutters installed by claimant were fixtures, and that no
25 further refund is warranted.

26 **OTHER MATTERS**

27 None.

28 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III