STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for Redetermination Under the Sales and Use Tax Law of: ARMENAK LAKISYAN, dba Glenoaks Video and Records Petitioner	Account Number: SR AC 97-297281 Case ID 486896 Glendale, Los Angeles County

Type of Business: Video and CD store

Audit period: 07/01/05 – 06/30/08

Item	Disputed Amount	
Disallowed claimed nontaxable labor	$196,113	
Tax as determined and protested		$16,179.39
Interest through 10/31/11		6,326.36
Balance Due		$22,505.75
Monthly interest beginning 11/1/11		$80.90

UNRESOLVED ISSUES

Issue 1: Whether disallowed claimed nontaxable labor charges were nontaxable. We find that the charges were taxable.

Petitioner sells and rents CD's and DVD's and also offers video transfer services. Petitioner started his business, and obtained his seller's permit, on September 16, 1998. As relevant to this appeal, petitioner copies its customers' data from a one type of media to another, such as a transfer to a DVD that can play on DVD players commonly in use in the United States. Upon completion of the copying process, petitioner returns the original disc, as well as the newly-copied disc, to his customers. Petitioner does not edit or in any way alter the content of the copied data. Petitioner did not add sales tax reimbursement to the amount charged the customer, and claimed the video transfer services as nontaxable labor on his sales and use tax returns. Petitioner had no prior audits.

On appeal, petitioner contends that the video transferring service was a nontaxable service of developing original information from customer-furnished data. Petitioner did not articulate how he develops original information from the customers' disc.

Generally, tax applies to the conversion of customer-furnished data from one physical form of recordation to another physical form or recordation. However, if the contract is for the service of developing original information from customer-furnished data, tax does not apply to the charges for the service. (Cal Code Regs., tit. 18, § 1502, subd (d)(1).) Here, petitioner made an exact copy of the customer-furnished information onto a new disc that would play on a domestic DVD player. Petitioner did not edit the transferred data in any way, and there is no evidence that petitioner developed original information in the process (e.g., by summarizing, computing, processing, extracting, sorting, etc.). Accordingly, we find that petitioner made taxable sales of the disc on which the data was transferred.

OTHER DEVELOPMENTS

None.

Summary prepared by Thea Etheridge, Business Taxes Specialist II

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