

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION FINAL ACTION SUMMARY

In the Matter of the Petition for Redetermination)
and the Claims for Refund Under the Sales and)
Use Tax Law of:)
JOHN HENRY DARRAL STEINHAUER, dba) Account Number: SR KHO 100-322007
Ben Funk Company) Case ID's 458651, 459600¹
Petitioner/Claimant) Fresno, Fresno County

Type of Business: Cabinet/Furniture maker

Audit period: 07/01/04 – 06/30/07

<u>Item</u>	<u>Disputed Amount</u>
Disallowed claimed nontaxable labor	\$1,281,819
Claimed refund for exempt sales	not stated
	<u>Tax</u>
Tax as determined and protested	<u>\$101,969.62</u>
Proposed tax redetermination	\$101,969.62
Interest through 5/31/10	<u>39,524.77</u>
Total tax and interest	<u>\$141,494.39</u>
Monthly interest beginning 6/1/10	<u>\$594.82</u>

The Board hearing on this matter was held on January 27, 2010. The Board allowed petitioner 30 days to provide additional evidence and the Sales and Use Tax Department (Department) 30 days to respond. The discussion under “Unresolved Issue” presents the facts as of the Board hearing, and the discussion under “Post Hearing Developments” addresses petitioner’s post hearing submission.

UNRESOLVED ISSUE

Issue : Whether petitioner has established that his claimed nontaxable labor charges or any of the sales reported as taxable on his returns for the audit period were, in fact, nontaxable. We conclude that petitioner has failed to do so.

¹ The D&R refers to a third case ID, 465359. That case ID was assigned when petitioner filed an amendment to the claim for refund (case ID 459600), requesting credit interest on the claimed overpayment. Case ID 465359 has been cancelled, and the amendment to the claim for refund has been incorporated into case ID 459600.

1 Petitioner was a sole proprietor who manufactured and made retail sales of cabinets, cabinet
2 parts, and other furniture from January 1, 2004, until March 30, 2008. He performed no installation,
3 and his sales contracts provided that title to the product passed to the customer upon petitioner's
4 delivery to the customer. Petitioner reported on a total sales basis and claimed deductions for labor
5 and sales tax reimbursement for each quarter of the audit period. Also, for the month of September
6 2006, petitioner claimed a deduction of \$3,007 identified as "other" nontaxable. Petitioner invoiced
7 his customers on a lump-sum basis.

8 The Department examined petitioner's sales on an actual basis and determined that the claimed
9 nontaxable labor charges actually represent taxable charges for assembly and fabrication labor.
10 Petitioner does not dispute the Department's finding that the labor at issue was assembly and
11 fabrication labor. However, petitioner contends that the vast majority of his sales were sales of fixtures
12 to construction contractors who furnished and installed the fixtures in the performance of construction
13 contracts. Petitioner asserts that the construction contractors resold the fixtures, and contends that his
14 sales to the construction contractors were nontaxable sales for resale. On that basis, petitioner
15 contends that all of his sales to construction contractors, both the amounts on which he reported and
16 paid sales tax and the amounts he claimed as nontaxable labor charges, were, in fact, nontaxable.
17 Thus, petitioner contends that the entire audited amount of disallowed claimed nontaxable labor
18 charges should be allowed. He also has claimed a refund of an unstated amount of tax reported on the
19 sales to construction contractors he now argues were sales for resale. In an amendment to the claim for
20 refund, petitioner has separately requested credit interest.

21 Construction contractors are retailers of fixtures they furnish and install in the performance of
22 construction contracts, and prefabricated cabinets are considered fixtures. Accordingly, there is a
23 possibility that many of the sales at issue could have been sales of fixtures to construction contractors
24 for resale. However, whether a contractor sells such a prefabricated cabinet or consumes the cabinet in
25 the performance of its construction contract depends on the percentage of labor the contractor provides
26 prior to installation, so it is also entirely possible that most or all of the disputed cabinets were
27 consumed in the performance of construction contracts. Petitioner has not provided timely, valid
28 resale certificates in connection with any of the sales at issue, nor has petitioner provided any

1 alternative documentary evidence to establish that petitioner's sales were to construction contractors
2 who resold the property, continue to hold the property for resale, or reported the applicable use tax.

3 **POST HEARING DEVELOPMENTS**

4 In response to the Board's order for petitioner to submit additional evidence, petitioner's
5 representative indicated in a letter dated February 25, 2010, that petitioner could not obtain further
6 documentation from its installing contractors to support its argument that the claimed deductions for
7 nontaxable labor were improperly disallowed or that any of the amount disallowed represented
8 nontaxable sales for resale. Thus, we conclude that claimed deductions for nontaxable labor were
9 properly disallowed and that petitioner did not report tax on any nontaxable sales. Accordingly we
10 recommend that the petition and the claim for refund be denied.

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12 Summary prepared by Rey Obligacion, Retired Annuitant
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