

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION SUMMARY FOR BOARD HEARING**

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 )  
 Ben Funk Company )  
 )  
 Petitioner/Claimant )

Account Number: SR KHO 100-322007  
 Case ID's 458651, 459600<sup>1</sup>  
 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 <sup>2</sup>
Claimed refund of tax on asserted exempt sales	not stated
Tax as determined and protested	\$101,969.62:
Proposed tax redetermination	\$101,969.62
Interest through 1/31/10	<u>37,145.49</u>
Total tax and interest	<u>\$139,115.11</u>
Monthly interest beginning 2/1/10	<u>\$ 594.82</u>

A Notice of Appeals Conference was mailed to petitioner's address of record, with a copy to petitioner's representative, Mr. Jesse McClellan of Associated Sales Tax Consultants.

Mr. McClellan's reply stated that neither he nor petitioner would appear at the conference and requested that the matter be decided based on the information contained in the case files. This matter was previously scheduled for Board hearing on December 16, 2009, but was postponed at petitioner's request because his representative had a scheduling conflict.

<sup>1</sup> 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.

<sup>2</sup> This amount is measure, and therefore differs from the amount shown in the D&R, which is tax.

**UNRESOLVED ISSUE**

1  
2 **Issue :** Whether petitioner has established that his claimed nontaxable labor charges or any of  
3 the sales reported as taxable on his returns for the audit period were, in fact, nontaxable. We conclude  
4 that petitioner has failed to do so.

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

12 The Sales and Use Tax Department (Department) examined petitioner's sales on an actual basis  
13 and determined that the claimed nontaxable labor charges actually represent taxable charges for  
14 assembly and fabrication labor. Petitioner does not dispute the Department's finding that the labor at  
15 issue was assembly and fabrication labor. However, petitioner contends that the vast majority of his  
16 sales were sales of fixtures to construction contractors who furnished and installed the fixtures in the  
17 performance of construction contracts. Petitioner asserts that the construction contractors resold the  
18 fixtures, and contends that his sales to the construction contractors were nontaxable sales for resale.  
19 On that basis, petitioner contends that all of his sales to construction contractors, both the amounts he  
20 previously regarded as taxable, on which he reported and paid sales tax, and the amounts he claimed as  
21 nontaxable labor charges, were, in fact, nontaxable.

22 Thus, petitioner contends that the entire audited amount of disallowed claimed nontaxable labor  
23 charges should be allowed. He also has claimed a refund of an unstated amount of tax reported on the  
24 sales to construction contractors he now argues were sales for resale. In an amendment to the claim for  
25 refund, petitioner has separately requested credit interest.

26 All gross receipts are presumed subject to tax until the contrary is established. A resale  
27 certificate relieves the seller from liability for sales tax if it is taken in good faith from a person who  
28 holds a seller's permit and who is engaged in the business of selling tangible personal property. A

