

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:)
CBC STEEL BUILDINGS, LLC.) Account Number SR KH 101-049183
Claimant) Case ID 597564
Lathrop, San Joaquin County

Type of Business: Manufacturer of metal buildings
Claim period: 07/01/09 – 09/30/10

<u>Item</u>	<u>Claimed Refund</u>
Claimed partial exemption for farm equipment	\$37,587.59

Claimant filed a claim for refund of a portion of the sales tax paid on its sales to Western Valley Development.

This matter was scheduled for Board hearing in September 2014, but was postponed for settlement consideration. It was rescheduled for hearing in September 2015 but was postponed at claimant’s request to allow additional time to prepare.

UNRESOLVED ISSUE

Issue: Whether claimant has overpaid tax on sales that qualify for the partial exemption for farm equipment. We find there is no overpayment.

Claimant manufactures metal buildings and has held a seller’s permit since January 2008. As relevant here, claimant sold materials to a construction contractor, Western Valley Development (Western), which Western used to construct an agricultural building for Grower Direct Nut (Grower). Claimant billed Western for sales tax reimbursement measured by the sales price of the materials, and Western billed Grower for sales tax reimbursement of the same amount. Grower paid claimant for the amount of sales tax reimbursement billed to Western. Grower subsequently advised claimant that the agricultural buildings qualify for the partial exemption from tax for farm equipment and machinery established by Revenue and Taxation Code section 6356.5. Claimant has filed a claim for refund of the amount of tax related to the partial exemption, asserting that the partial exemption should apply

1 because the end user of the materials was Grower, who is a qualified person as defined by
2 section 6356.5. Claimant also states that the partial exemption should be granted in accordance with
3 the spirit of the law.

4 There is no dispute that claimant sold the materials to Western, a construction contractor, who
5 was the consumer of the materials used in the construction of an agricultural building. Further, the
6 parties agree that Western is not a qualified person as defined in section 6365.5, subdivision (b)(1) and
7 California Code of Regulations, title 18, section (Regulation) 1533.1, subdivision (b)(6). In addition,
8 Western, as a construction contractor, is specifically excluded from the definition of qualified person
9 provided in Regulation 1533.1, subdivision (b)(3). Therefore the sales by claimant to Western do not
10 qualify for the partial exemption from sales tax for sales of farm equipment and machinery.

11 We reject claimant's assertion that the partial exemption should apply because Grower was the
12 end user of the materials, since there is no provision in the law which provides an exemption based on
13 the qualification of the end user. Further, we note that claimant's assertion that the exemption should
14 be granted in accordance with the spirit of the law, is an argument based upon equity. That argument
15 is not applicable here because the Board lacks equity powers and instead is bound by statute. (See
16 *Standard Oil Co. v Board of Equalization* (1936) 6 Cal.2d 557, 559; see also *Newco Leasing, Inc. v.*
17 *State Bd. of Equalization*, (1983) 143 Cal.App.3d 120, 124, holding that the Board must be faithful to
18 its own announced regulations.)

19 **OTHER MATTERS**

20 None.

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