OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	OTA Case No. 18083552
	CDTFA Case ID: 486338
PROMOTIONAL DESIGN CONCEPTS, INC.	

OPINION

Representing the Parties:

For Appellant:	Javier Ramirez, Representative Juan Partida, Representative Adam Melendez, Owner
For Respondent:	Kevin B. Smith, Tax Counsel III Scott Claremon, Tax Counsel IV Jason Parker, Chief of Headquarters Ops.
For Office of Tax Appeals:	Corin Saxton, Tax Counsel IV

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Promotional Design Concepts, Inc. (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)[1] in response to appellant's petition for redetermination of a Notice of Determination (NOD) for tax of $148,644.86, and applicable interest, for the period October 1, 2004, to September 30, 2007 (audit period).[2]

Office of Tax Appeals Administrative Law Judges Josh Lambert, Nguyen Dang, and Suzanne B. Brown held an oral hearing via videoconference for this matter on

[1] Sales and use taxes were formerly administered by the State Board of Equalization (BOE). In 2017, functions of BOE relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to acts or events that occurred before July 1, 2017, "CDTFA" shall refer to BOE; and when this Opinion refers to acts or events that occurred on or after July 1, 2017, "CDTFA" shall refer to CDTFA.

[2] On appeal, CDTFA agrees to grant relief of interest for the period June 1, 2014, through April 30, 2018, pursuant to R&TC section 6593.5.

February 24, 2021. At the conclusion of the hearing, the record was closed, and this matter was submitted for decision.

ISSUE

Whether further adjustments to disallowed claimed nontaxable labor sales are warranted.

FACTUAL FINDINGS

1. Appellant manufactures, sells, and leases custom-made outdoor tents, balloons, and other inflatables for promotional and advertising purposes. Tents range in size from 10’ by 10’ to 40’ by 100’. Custom-made inflatables range in height from 6’ to 30’ and come in a variety of shapes. Appellant also leases and sells inflatable misting stations, obstacle courses, and bounce houses.
2. Appellant billed its customers for its services on a lump-sum basis as “labor” or “installation.” Appellant generally collected use tax on 25 percent of the total invoiced amount, which it attributed to the tangible personal property it leased. Appellant claimed the remaining 75 percent of its lease receipts as nontaxable labor.
3. CDTFA performed an audit of appellant’s business and found errors after spot testing sales invoices for the legitimacy of claimed exempt labor sales, sales for resale, and sales in interstate commerce. Due to the large volume of transactions, CDTFA tested claimed nontaxable sales using a block test for the third quarter of 2006 (3Q06).[3]
4. During the audit, appellant provided CDTFA with labor schedules listing the types of labor it performed for each type of lease, which included installation, takedown, travel time, loading, unloading, and cleaning. The labor schedules included the hours spent on each of the tasks.
5. CDTFA accepted appellant’s apportionment of 75 percent of lease receipts to labor charges. However, CDTFA determined that appellant erred in treating all labor charges as nontaxable.
6. CDTFA requested information regarding taxable fabrication labor for the time appellant spent assembling the tents, but no such information was provided. CDTFA estimated

[3] The block test included 123 leases and 8 sales. CDTFA found all of the sales to be taxable (i.e., a 100 percent error rate for sales). However, rather than compute individual error rates for all three disallowed exemption categories, CDTFA computed a single error rate for all transactions, which CDTFA applied uniformly to all of appellant’s claimed nontaxable sales and labor.

that 33 percent of the total installation labor time indicated on appellant's schedules constituted installation labor, with the rest constituting taxable fabrication labor ("installation ratio"). CDTFA's estimate was made under the belief that the time required for fabrication of a large tent should exceed the time devoted to installing the tent.

7. For each lease in the 3Q06 block test, CDTFA applied the calculated installation ratio to invoiced labor charges to compute nontaxable installation labor for each transaction.[4] CDTFA then computed an error rate which it applied to the claimed nontaxable sales for the audit period, resulting in total disallowed claimed nontaxable labor charges of $1,450,397.

8. CDTFA issued an NOD to appellant on March 6, 2009, for tax of $148,644.86, plus accrued interest. The NOD is based on an aggregate deficiency measure of $1,834,338, consisting of three audit items: (1) purchases of fixed assets of $348,462 without payment of tax or tax reimbursement; (2) additional taxable sales of $35,479; and (3) disallowed labor of $1,450,397. On March 30, 2009, appellant filed a timely petition for redetermination disputing the disallowed claimed nontaxable labor under audit item 3. Appellant did not dispute the other audit items.

9. CDTFA issued a Decision recommending a reaudit to remove duplicate hours used to calculate appellant's total hours per type of lease. As a result, CDTFA reduced the deficiency measure for audit item 3 by $11,125 from $1,450,397 to $1,439,272.

10. CDTFA performed a second reaudit to account for an error in one transaction in the first reaudit, where an incorrect labor ratio was applied. As a result, CDTFA reduced the deficiency measure for audit item 3 by an additional $898 to $1,438,374. This appeal followed.

11. CDTFA completed a third reaudit that examined additional documentation provided by appellant. Appellant provided a detailed breakdown of the labor involved for its 20' by 20' and 20' by 40' sized tents (allocation schedules), which indicated the number of

[4] For each type of lease listed in the labor schedules, CDTFA multiplied the installation time by 0.33 to calculate the hours of installation labor. CDTFA then divided the resulting installation hours by total labor hours for each type of lease and applied that ratio to the invoiced labor hours.

installers and the time required to perform the various tasks.[5] Appellant also provided a separate breakdown for each of these tents depending on the installation hardware used, including stakes, water barrels, eyebolts, and sandbags.

12. CDTFA used the allocation schedules to calculate a revised ratio. For instance, for 20' by 40' tents with a stake installation, CDTFA used the schedule to calculate 150 assembly minutes and 88 installation minutes resulting in a ratio of 36.97 percent (88 ÷ 238 total minutes [150 + 88]).[6]

13. CDTFA determined a total weighted installation ratio of 40.45 percent for 20' by 40' tents and 47.12 percent for 20' by 20' tents.[7] For all other tents and inflatables, CDTFA used a 44.95 percent installation ratio, which it determined by using a weighted average of the ratios for the 20' by 40' and 20' by 20' tents. As a result, CDTFA reduced the taxable measure for audit item 3 by $39,351 from $1,438,374 to $1,399,023.

DISCUSSION

A retailer owes sales tax on its gross receipts from the retail sale of tangible personal property in California. (R&TC, § 6051.) When sales tax does not apply, use tax applies to the storage, use, or other consumption of tangible personal property purchased from any retailer for storage, use, or other consumption in this state, measured by the sales price, unless that use is specifically exempted or excluded by statute. (R&TC, §§ 6201, 6401.)

A "lease" is a granting of possession of tangible personal property by a lessor to a lessee for a consideration. (R&TC, §§ 6006.1, 6006.3.) Unless otherwise exempt, a lease of tangible personal property is a continuing sale and purchase for the duration of the lease. (R&TC, §§ 6006.1, 6010.1; Cal. Code Regs., tit. 18, § 1660(b)(1).) Generally, the applicable tax is a use

[5] The tasks include: (1) connecting poles; (2) attaching the tent cover; (3) buckling the tent to the frame; (4) securing the tent to realty; (5) affixing lights; (6) affixing signs; (7) affixing fire extinguishers; and (8) disassembly and removal.

[6] To calculate 150 assembly minutes for 20' by 40' tents with a stake installation, CDTFA combined the following amounts indicated on the schedule: (1) 90 minutes for connecting poles (3 installers x 30 minutes); (2) 30 minutes for attaching tent covers (3 installers x 10 minutes); and (3) 30 minutes for buckling the tent to the frame (3 installers x 10 minutes). CDTFA calculated 88 minutes of installation labor by adding the time required to attach the tent to realty, which included 72 minutes of "Stake Installation" and 16 minutes of "Tent Tether to Stake" as indicated on the schedule.

[7] CDTFA calculated a weighted installation ratio for each type of installation (stakes, sandbags, etc.) based on the how many jobs used a particular type of installation hardware, and then added the ratios to determine the total weighted installation ratio.

tax upon the use in this state of the property by the lessee as measured by the rentals payable, and the lessor is required to collect the use tax from the lessee and pay it to the state. (Cal. Code Regs., tit. 18, § 1660(c)(1).)

"Sales price" means the total amount for which tangible personal property is leased, including the cost of labor or services, as well as any services that are a part of the sale. (R&TC, § 6011(a)(2), (b)(1).) However, "sales price" does not include the amount charged for installing or applying the property sold. (R&TC, § 6011(c)(3); Cal. Code Regs., tit. 18, § 1546(a).) Such labor and services do not include the fabrication of property in place. (Cal. Code Regs., tit. 18, § 1546(b).) Producing, fabricating, and processing include any operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property. (Cal. Code Regs., tit. 18, § 1526(b).)

If CDTFA is not satisfied with the amount of tax reported by the taxpayer, CDTFA may determine the amount required to be paid on the basis of any information within its possession or that may come into its possession. (R&TC, § 6481.) In the case of an appeal, CDTFA has a minimal, initial burden of showing that its determination was reasonable and rational. (*Appeal of Talavera*, 2020-OTA-022P.) Once CDTFA has met its initial burden, the burden of proof shifts to the taxpayer to establish that a result differing from CDTFA's determination is warranted. (*Ibid*.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid*.) A taxpayer bears the burden of proving entitlement to an exemption or exclusion and must provide some credible evidence of that entitlement. (*Appeal of Owens-Brockway Glass Container, Inc.*, 2019-OTA-158P.)

Appellant reported all labor as nontaxable labor. In determining the disallowed claimed nontaxable labor, CDTFA calculated the amount of nontaxable installation labor by using documentation provided by appellant, including the labor schedules and allocation schedules.[8] We find CDTFA's deficiency determination to be reasonable and appellant has the burden to show that further adjustments are warranted.

[8] There is no dispute that, because the tents and inflatables are not leased in substantially the same form as acquired, as appellant manufactures the items, the leases qualify as a continuing sale, and use tax applies, pursuant to California Code of Regulations, title 18, section 1660(b).

Delivery and Transportation

Appellant contends that CDTFA improperly allocated taxable labor to total labor hours which included labor, such as delivery and travel, that was performed as a courtesy without charge.[9] Appellant also argues that its delivery labor is nontaxable because it was separately stated. Appellant's owner testified at the hearing that delivery was a courtesy, and that it was not separately stated on invoices.

Charges for transporting the property sold or leased are included in the sales price unless the transportation charges are separately stated, among other requirements.[10] (R&TC, § 6011(a)(3) & (c)(7); Cal. Code Regs., tit. 18, § 1628(b)(2).) Appellant did not separately state charges for transportation and, as a result, the charges for transportation labor would not be excluded from taxation.

Cleaning and Takedown

Appellant argues that its labor for takedown and cleaning are not taxable because the services were optional. Appellant's owner testified at the hearing that certain customers performed the cleaning themselves, or that appellant performed the cleaning as a courtesy. Appellant provides two invoices from outside the audit period that indicate charges for "takedown" and "cleaning fee," which it argues demonstrates that separately stated optional takedown and cleaning services were provided for certain transactions.

Charges for these services are only nontaxable if they are separately stated, and the lessee is free to lease the property without having to hire the lessor to perform the service. (See, e.g., Sales and Use Tax Annotations 330.3280 & 330.2150 [takedown], 330.2080 & 330.2330

[9] Loading and unloading times were also included in total hours under the labor schedules. There is no evidence that those services were not part of the lump-sum amount charged to customers or that they are not subject to tax. Appellant stated at the hearing that it "did accept that there is an unloading portion as part of the assembly." We note that loading and unloading, as part of total hours, were allocated according to the installation ratios.

[10] In general, tax would apply to charges for transportation, unless: (1) the transportation charges are separately stated; (2) are for transportation from the taxpayer's place of business or other point from which shipment is made directly to the purchaser, and (3) the transportation occurs after the sale of the property is made to the purchaser. (Cal. Code Regs., tit. 18, § 1628(b)(2).) In the context of leases, the sale occurs before delivery, for purposes of exclusion of transportation charges from tax, if the lease commences prior to delivery. (Cal. Code Regs., § 1628(b)(3)(B); Sales and Use Tax Annotation 330.2525.)

[cleaning].)[11] As noted above, appellant provides two invoices that include separately stated charges for takedown and cleaning. However, appellant must show not only that charges were separately stated, but that the services were optional, and appellant has not provided sufficient evidence to show that its customers could have leased the items without appellant providing takedown and cleaning services.

Appellant billed its customers on a lump-sum basis and did not provide invoices or other documentation from the audit period, such as contracts indicating the terms of the transactions, such that we may verify which services were required, or billed, as part of appellant's leases. The evidence provided, including the two invoices from outside the audit period, are insufficient to establish that appellant separately stated charges for cleaning and takedown during the audit period or that such services were optional. Accordingly, appellant has not established that these services were not part of the lump-sum amount charged to customers for the audit period or that they are not subject to tax.

Tents – Installation vs. Fabrication

Appellant concedes that its labor charges include taxable labor; however, appellant asserts that the installation ratios should be further adjusted, such that 90 percent of the labor is allocated to installation.[12] CDTFA based its revised ratios on appellant's allocation schedules, and correctly calculated fabrication labor to include the time indicated for tasks to assemble the tent, such as to connect poles and attach the tent cover to the frame.

CDTFA correctly calculated installation labor to include the time indicated for tasks to affix the tent to realty, such as by using stakes, water barrels, eyebolts, or sandbags. (See, e.g., Sales and Use Tax Annotation 330.3538 [attachment of tangible personal property to realty is installation].) For example, CDTFA calculated the installation labor for a tent with a stake installation by using the time indicated for "Stake Installation" and "Tether Tent to Stake." We

[11] Annotations are not binding authority and do not have the force and effect of law. (Cal. Code Regs., tit. 18, § 5700(a)(1); *Appeal of Martinez Steel Corporation*, 2020-OTA-074P.) However, the Office of Tax Appeals may give some consideration to annotations and independently determine the appropriate weight to afford an annotation. (*Yamaha Corp. of America v. BOE* (1998) 19 Cal.4th 1, 15; *Appeal of Martinez Steel Corporation*, *supra*.)

[12] We note that appellant's allocation schedules compute installation time as being approximately 90 percent, but include time allocated for non-installation activities such as takedown. In addition, appellant's schedules indicate that affixing the tent cover to the frame is installation; however, we find that CDTFA properly determined it is fabrication labor.

note that CDTFA did not allocate any time to installing lights, signs, and fire extinguishers. CDTFA stated at the hearing that hanging these various fixtures in the tents is not installation.

The labor to install the lights, signs, and fire extinguishers does not involve the connecting of an item's constituent parts, such that we would consider it to be fabrication labor, but it instead consists of the connecting of separate and discrete items to each other. Therefore, we find that adding the lights, signs, and fire extinguishers to the tent does not constitute the fabrication of the tent in this case, but rather, it is the nontaxable installation of various separate and discrete accessories to the tent.

Appellant's Evidence of Tent Installation

On appeal, appellant provides a video demonstrating the setup of a 20' by 40' tent. The video is approximately 105 minutes, 23 seconds. The tent is, for the most part, fully assembled at the 30:40-minute mark, as the workers have completed fastening and connecting the tent poles and attaching the tent cover, which is fabrication labor. The rest of the video is spent mostly performing installation labor, including affixing the tent to the ground using stakes and tethers, as well as installing lights, signs, and fire extinguishers. The video indicates that the time taken to perform installation labor is approximately 71 percent of the total time in setting up the tent.[13]

In considering the weight to give the tent videos, we consider a variety of factors. The videos do not appear unauthentic and, unlike the "inflatable" video described below, generally consist of a single steady shot without editing, so that all activities may be monitored in real time. The tasks performed in the videos more or less track the time stated on the allocation schedules provided by appellant, which CDTFA does not dispute.[14]

Our computation of installation time from observing the videos is increased because additional time is added for affixing the lights, signs, and fire extinguishers. If we estimated the installation time using the allocation schedules, as did CDTFA, but added the time for affixing such accessories, we would revise the installation ratio for a 20' by 40' tent to be approximately

[13] The installation ratio of 71 percent is computed by dividing 1840 seconds (fabrication labor is generally complete at 30:40) by 6323 seconds (total video length is 1:45:23) and subtracting the result from 1.

[14] It appears there may be some variations in the time and number of workers on the videos for certain tasks as compared to what is indicated on the allocation schedules. However, it appears that the time spent to perform the different types of labor generally approximates the time stated in appellant's allocation schedules.

50 percent.[15] However, the video indicates various activities that extend the installation labor time, such as workers switching tasks, communicating with each other, moving equipment, and other activities which show that the reality of appellant's installation time is somewhat longer than stated on the allocation schedules. And as appellant's owner testified at the hearing, the installation portion is the more difficult and variable part of the labor. While CDTFA's original estimate of an installation ratio of 33 percent was made under the belief that the fabrication time required for the tents should exceed the time devoted to installing the tents, we find that the evidence indicates the opposite. An estimate of 71 percent is reasonable as it reflects that appellant's installation generally exceeds the time taken for fabrication.

It should be noted that, as is necessary in this case, we are making estimates which we find to be reasonable, based on our evaluation of the weight to give the evidence available in the appeal record. Such estimates are fact-specific and to be determined on a case-by-case basis. In addition, such estimates are not exact amounts of installation time for each circumstance; we acknowledge that installation times may vary due to, for instance, certain types of environments. Accordingly, we make an adjustment to account for the video evidence, which we find to be reliable and the best available evidence in this case and determine that the installation ratio should be revised to 71 percent for 20' by 40' tents.

Appellant also provides a video for setting up a 20' by 20' tent, which is approximately 72 minutes, 21 seconds. For the same reasons as described above, we find this video to be reliable and the best available evidence. As with the 20' by 40' tents, we add installation time for affixing the lights, signs, and fire extinguishers to the tent. As a result, we find the fabrication labor appears to be generally complete at the 14:50-minute mark, with the rest of the video generally consisting of installation labor. Therefore, the video indicates that the time taken to perform the installation labor is approximately 80 percent of the total time in setting up the

[15] Using CDTFA's method for calculating the revised ratios using the allocation schedules, we would include an additional 50 minutes for installation labor comprised of: (1) 20 minutes for "Lighting System Installs"; (2) 9 minutes to install "No Smoking Signs"; (3) 20 minutes for "Exit Sign Install"; and (4) 1 minute for "Install of fire extinguishers" (0.5 minutes for installations other than stake). This increases the total installation minutes to 138 and the total minutes to 288, resulting in a revised weighted installation ratio of 31.15 percent for 20' by 40' tents with a stake installation (i.e., [138 ÷ 288] x 65 percent of total installations use stakes). Calculating the same adjustment for each type of tent increases the total weighted installation ratio from 40.45 percent to 50.34 percent for 20' by 40' tents. This adjustment increases the weighted installation ratio from 47.12 percent to 60.36 percent for 20' by 20' tents, and from 44.95 percent to 57.09 percent for all other tents/inflatables.

tent.[16] Accordingly, we determine that the installation ratio should be revised to 80 percent for 20' by 20' tents.[17]

Using a weighted average of these two installation ratios (the same method used by CDTFA), we compute a 77 percent installation ratio for the other tent sizes, not including inflatables.[18]

Inflatables – Installation v. Fabrication

Appellant asserts that the fabrication labor time required for a bounce house, such as attaching the air blower, should be considered immaterial when calculating the installation ratio for inflatables. Appellant also contends that CDTFA improperly used the installation ratio for other tent sizes for inflatables. We agree that a separate ratio should be applied for inflatables in this case. Appellant provides video evidence of the installation of a bounce house, which demonstrates that the process differs from that of a tent.

For instance, there is the placing of the tarp, which we find is not fabrication labor. The video does not show the tarp being fastened to the bounce house; also, the tarp is not part of the bounce house. The tarp is an item that is put into position on the ground as an initial step in the installation process, as it acts as a separator between the bounce house and the ground; therefore, it is part of the process of affixing the bounce house to realty. (See, e.g., Sales and Use Tax Annotations 330.3538 [attachment of tangible personal property to realty is installation], 435.1640, 295.0367 [installation is attaching or adapting the property to or for a specified site, i.e., emplacement].) Accordingly, the placing of the tarp is installation labor.

In addition, the installation labor in the video includes other actions as part of the process of affixing the bounce house to realty, such as the placement of the bounce house into its final

[16] The installation ratio of 80 percent is computed by dividing 890 seconds (fabrication labor is generally completed at 14:50) by 4341 seconds (total video length of 1:12:21) and subtracting the result from 1.

[17] We find it reasonable that this ratio is higher than that of a 20' by 40' tent. This result is consistent with CDTFA's determination based on the allocation schedules. There is a decrease in fabrication labor time for a 20' by 20' tent because, for example, there are less parts, such as poles, to assemble. However, installation labor time does not necessarily decrease at the same rate. For example, while there are 16 stakes for the larger tent, there are still 12 stakes to install for the smaller tent, which may not reduce installation labor time to the same extent that certain fabrication labor time is reduced for the smaller tent, resulting in an increase to the installation ratio.

[18] The combined weighted installation ratio is computed by adding the weighted installation ratio for 20' by 40' tents of 23.18 percent (i.e., 32.65 percent [percentage of tent setups] x 71 percent [installation ratio]) and the weighted installation ratio for 20' by 20' tents of 53.88 percent (i.e., 67.35 percent [percentage of tent setups] x 80 percent [installation ratio]), resulting in approximately 77 percent.

position and staking it to the ground. (See Sales and Use Tax Annotation 240.0008 [installation is the physical act of affixing or placing the property in position].) The fabrication labor in the video includes attaching the air blower to the bounce house, tying off unused air inlets in the bounce house, and inflating the bounce house.

Appellant's Evidence of Inflatable Installation

Appellant provides a video showing the installation and assembly of a bounce house. Unlike the tent videos, the bounce house video is brief and heavily edited, with substantial cutting and adjusting of the playback speed. The video appears to indicate that 65 percent of the inflatable setup process is installation labor, and 35 percent is fabrication labor.[19]

We find this ratio to be reasonable given that the video indicates that installation requires more labor than fabrication, as there are multiple stakes, and the process of affixing and securing the bounce house to realty appears more labor intensive, especially depending on where it is to be installed. While the bounce house is almost fully assembled other than, for example, attaching the air blower and inflating the bounce house, the fabrication labor is not inconsequential, as appellant contends. While a ratio based on the video is less than it would have been if we had used CDTFA's weighted tent ratio, we find the video, while heavily edited, is the best evidence in the record relating to the inflatables; therefore, we find this ratio is more

[19] Unloading of the tarp takes place from approximately 0:16 to 0:18 (2 seconds), which is not installation or fabrication labor. From 0:19 to 0:32 (13 seconds), the tarp is placed into position, which as discussed above, we find to be installation labor. From0:33 to 0:45 (12 seconds), the bounce house is unloaded, which is not installation or fabrication labor. From 0:46 to 1:19 (33 seconds), the bounce house is placed into position, which as discussed above, we find to be installation labor. From 1:19 to 2:15 (56 seconds), fabrication labor is performed, which includes attaching the power cord to the air blower, attaching the blower to the bounce house, closing air inlets, and inflating the bounce house. The installation labor to affix the tent using one stake is performed for 13 seconds from 2:21 to 2:34, which we multiply to account for 4 stakes to get 52 seconds (13 x 4). Checking the installation to ensure the bounce house is secure to the realty occurs for approximately 14 seconds from 2:34 to 2:48. Checking the fabrication to ensure the air inlets were properly closed is approximately 5 seconds from 2:49 to 2:54. Therefore, it appears that there are approximately 112 seconds of installation shown (13 + 33 + 52 + 14) as opposed to approximately 61 seconds of fabrication (56 + 5), for a percentage of 65 percent of installation (112 ÷ 173 [112 + 61]).

reasonable than using the ratio related to tents. Accordingly, we find the installation ratio for inflatables to be 65 percent.[20]

HOLDING

Appellant has shown that further adjustments to disallowed claimed nontaxable labor sales are warranted.

DISPOSITION

Recompute the measure of tax by revising the labor installation ratios to 71 percent for 20' by 40' tents, 80 percent for 20' by 20' tents, 77 percent for other tent sizes, and 65 percent for inflatables.[21] Otherwise, CDTFA's action is sustained.

DocuSigned by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

We concur:

DocuSigned by:
Nguyen Dang
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Nguyen Dang
Administrative Law Judge

DocuSigned by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

Date Issued: 6/2/2021

[20] Appellant contends that CDTFA erroneously disallowed all of appellant's labor charges relating to its sales of tents and inflatables. However, appellant provides no evidence that it performed any labor in connection with its such sales to warrant application of the labor installation ratios. We note that removing appellant's sales from "disallowed labor" in the block test would result in a slight decrease to the error rate. However, because CDTFA found that all eight of appellant's sales were subject to tax, creating a separate error percentage for disallowed claimed nontaxable sales would result in all being disallowed. Given that appellant reported substantially more nontaxable sales than it did labor, this adjustment would result in a considerable net increase to appellant's tax liability. As CDTFA's determination to use a single block test for sales and labor is ultimately to appellant's benefit, we do not disturb it.

[21] CDTFA's determination used the installation ratio for other tent sizes for inflatables. However, our determination is that a separate ratio should be applied for inflatables.