OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	OTA Case No.: 21037464
KOENIG & BAUER (US) INC.	CDTFA Case IDs: 113-118, 486-987, & 620-106

OPINION

Representing the Parties:

For Appellant: Rick Najjar, Representative
Colette Sutton, Representative

For Respondent: Jarrett Noble, Tax Counsel IV
Jason Parker, Chief of Headquarters Operations
Chad Bacchus, Tax Counsel IV

For Office of Tax Appeals: Steven Kim, Tax Counsel III

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Koenig & Bauer (US) Inc. (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)[1] denying appellant's petition for redetermination of the Notice of Determination (NOD) dated July 31, 2018. The NOD is for $144,674 in tax and applicable interest for the period January 1, 2014, through December 31, 2016 (liability period).

Office of Tax Appeals (OTA) Administrative Law Judges Suzanne B. Brown, Keith T. Long, and Josh Aldrich held an electronic oral hearing for this matter on February 24, 2023. At the conclusion of the hearing, the parties submitted the matter, and OTA closed the record.

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

ISSUE

Whether any further adjustments are warranted to the determined measure of unreported taxable sales.

FACTUAL FINDINGS

1. Appellant, a Delaware corporation with its headquarters in Texas, sells printing presses. Appellant is a subsidiary of Koenig & Bauer Group, a German company that manufactures printing presses. Appellant is registered with the California Secretary of State and holds a valid seller's permit.
2. CDTFA conducted an audit of appellant. After examining appellant's records, CDTFA determined that appellant had unreported taxable sales of $2,058,352 consisting of taxable transportation and labor charges. The audited unreported taxable transactions that remain at issue pertain to sales of printing presses to three buyers located in California: Advance Paper Co. (Advance), Royal Paper Box Co., Inc. (Royal), and Ed Garvey and Company (Garvey).

Advance

3. According to a document entitled *Part I – New Press - Purchase and Sale Agreement* (hereinafter, sale agreement) dated May 29, 2015, appellant agreed to sell equipment, delivered and installed, to Advance for the purchase price of $4,800,000. Advance signed the sale agreement on May 29, 2015, and appellant signed on June 3, 2015.
4. Documents entitled *Part II – Standard Terms & Conditions* and *Part III – Security Agreement* were initialed or signed by the buyer and seller. The security agreement provides that the seller will retain a security interest in the equipment until the buyer has made all payments. The standard terms and conditions also provide:

> Installation and Erection: Buyer will furnish suitable, adequate foundations on which the Equipment is to be located with adequate access to the Equipment. Buyer will pay the cost of handling and will furnish and attach all necessary wiring to the Equipment, and all necessary ventilation, filters, pollution control and other mechanical or electrical devices, except when supplied as part of the Equipment. Seller will furnish personnel to supervise erection of the Equipment and to demonstrate its use, except when the Equipment is shipped in one piece and does not require special erection or instruction.

5. A document entitled *Part IV Quotation 19359* is dated May 21, 2015. The document lists the technical data of the equipment, showing the standard equipment and special accessories included in the order (e.g., additional packages requiring modification of the printing press, and training sessions).[2] The document also shows various terms and conditions, including installation terms stating that the "price includes services of our erection engineer(s)."
6. An addendum dated September 22, 2015, separately states the purchase price of the equipment ($4,234,630) and the "freight & assembly" charge ($565,370). Advance signed the addendum on January 27, 2016, and appellant signed it on February 8, 2016.
7. A FedEx delivery receipt shows the equipment was shipped to Advance on January 19, 2016, and delivered on January 21, 2016. However, appellant provided an internal form document, completed and signed by Advance, showing a delivery date of February 4, 2016.
8. A document entitled *Down Payment: DP26* is dated February 2, 2016. The *Down Payment: DP26* separately states charges for installation ($308,283), training ($56,274), sea freight ($70,806), freight and rigging ($105,607), additional freight ($24,400), and "FSCR" ($394,630).

Royal

9. Appellant did not provide CDTFA with the sale agreement for Royal but did provide an addendum (Addendum A). Royal signed Addendum A on July 30, 2015, and appellant signed it on August 3, 2015.
10. According to Addendum A, appellant agreed to sell additional equipment to Royal, increasing the purchase price of equipment, delivered and installed, to $3,268,000.
11. Appellant also provided a second addendum (Addendum B). Addendum B, dated September 22, 2015, separately states the purchase price of the equipment ($2,879,269) and the "freight & assembly" charge ($388,731). Royal signed Addendum B on November 19, 2015, and appellant signed on November 23, 2015.

[2] The document was initialed, presumably, by the buyer and seller.

12. Appellant's internal document entitled "*Vertriebskalulation*" ("sales calculation" in German) is timestamped May 11, 2015. The *Vertriebskalulation* indicates that appellant delivered equipment to Royal on December 22, 2015.[3] The document also lists items included in the order, including entries for standard press, additional equipment, transportation, and installation.

13. A document entitled *Down Payment: DP37* is dated February 16, 2016. The *Down Payment: DP37* separately states charges for installation ($191,511), training ($22,656), sea freight ($38,771), freight and rigging ($63,632), and additional freight and installation ($72,161).

14. An invoice dated February 19, 2016, shows two payments by Royal on February 2, 2016 ($2,068,800 and $138,579), a balance due ($1,060,621), and a ship date of February 19, 2016.

Garvey

15. According to a sale agreement dated December 23, 2014, appellant agreed to sell equipment, delivered and installed, to Garvey for the purchase price of $7,540,000. The Garvey sale agreement also included a standard terms and conditions document and a security agreement. Garvey signed the sale agreement on December 23, 2014, and appellant signed on or about December 29, 2014.

16. A document entitled *Part IV Quotation 17755* is dated December 23, 2014. The document is part of the sales agreement between appellant and Garvey. The document includes the technical data of the equipment sold: it shows standard equipment and special accessories included in the order (including an entry for "installation in the factory" and training sessions).[4] The document also shows various terms and conditions, including installation terms stating that the "price includes services of our erection engineer(s)."

17. A FedEx delivery receipt shows the equipment was shipped to Garvey on December 22, 2015, and delivered on December 28, 2015.

[3] The timestamp indicates the document was a total of eight pages, but only two were submitted to OTA.

[4] The document was initialed by the buyer and seller.

18. A document entitled *Down Payment: DP36* is dated January 22, 2016. The document separately states charges for installation ($397,421), training ($57,747), sea freight ($62,983), freight and rigging ($150,600), and additional freight and install ($1,500). The down payment document also shows a total due of $1,041,000.[5]

Procedural Background

19. On July 31, 2018, CDTFA issued the NOD.
20. On August 1, 2018, appellant timely filed a petition for redetermination.
21. During CDTFA's internal appeals process, appellant conceded some of the determined measure of unreported taxable sales, and now disputes only $1,623,582.
22. On January 27, 2021, CDTFA issued its decision which denied appellant's petition for redetermination.
23. This timely appeal to OTA followed.
24. On September 14, 2021, CDTFA reduced the measure of unreported taxable sales by $40,911. CDTFA explained that appellant provided two third-party invoices for Advance identifying installation charges totaling $20,500 and one third-party invoice for Garvey identifying installation charges of $12,000 to Garvey. CDTFA determined that these amounts are not subject to tax. Although appellant did not provide a similar third-party invoice for Royal, CDTFA calculated nontaxable labor charges of $8,411 to Royal.[6]

DISCUSSION

California imposes sales tax on a retailer's retail sales of tangible personal property sold in this state measured by the retailer's gross receipts, unless the sale is specifically exempt or excluded from taxation by statute. (R&TC, §§ 6012, 6051.) Gross receipts mean the total amount of the sale price of the retailer's retail sales, without any deduction for (1) the cost of the property sold, (2) the cost of the materials used, labor or service cost, interest paid, losses, or any other expense, or (3) the cost of transportation of the property. (R&TC, § 6012(a).) The law presumes that all gross receipts are subject to tax until the contrary is established. (R&TC,

[5] Based on the down payment document, it is unclear whether the total amount due includes the installation, transportation, or training charges, or was for a down payment for just the equipment.

[6] CDTFA divided the total nontaxable labor charges to Advance and Garvey by the total sales price ($32,500 ÷ $12,627,00 = .257358 percent). CDTFA then applied the percentage to the sales price of $3,268,000 charged to Royal to calculate $8,411.

§ 6091.) It is the retailer's responsibility to maintain complete and accurate records to support reported amounts and to make them available for examination. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).) A sale includes any transfer of title or possession of tangible personal property for a consideration. (R&TC, § 6006(a).)

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 which is in its possession or 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.)

Here, CDTFA determined during audit that sales documents for appellant's sales to Advance, Royal, and Garvey indicated that appellant sold equipment for a lump-sum price, including transportation and installation charges. Accordingly, CDTFA determined that the transportation and the installation charges were taxable. However, appellant did not report these transportation charges or installation charges on its sales and use tax returns. Since CDTFA based its determination on the direct examination of appellant's records, OTA finds CDTFA's determination to be reasonable and rational.

Appellant contends that the transportation charges for shipping equipment to Advance, Garvey, and Royal are not taxable because the transportation charges are separately stated in documents issued contemporaneously with the sale. (See Cal. Code Regs., tit. 18, § 1628(a).) Appellant argues that the entire cycle, from signing the purchase agreement to the later invoicing and billing, must be viewed as a contemporaneous period. Appellant argues that since contemporaneous is not defined by statute, or in the pertinent regulation, it should be given a plain meaning. In support of its arguments, appellant submits the definition of contemporaneous from various dictionaries (e.g., belonging to the same time or period, existing or occurring at the same time; refers to things that happened in, or are associated with, the same period of time,

whereas "simultaneous" refers to things that happen at the same moment),[7] various sources discussing "contemporaneous" within the context of charitable deductions relating to Internal Revenue Code (IRC) section 170, an unpublished court opinion that examines unrelated facts within the meaning of R&TC section 6379.5 and California Code of Regulations, title 18, (Regulation) section 1541.5, and a copy of Regulation section 1525.4.

Appellant also asserts that the later documents modified the original contract in accordance with Civil Code section 1698. The issue before OTA, however, is not a contract dispute (e.g., the validity of a contract, enforcement of a contract, or whether a contract was modified). Instead, the issue is the proper application of the Sales and Use Tax Law to the transportation and installation charges.

Transportation Charges

Generally, the cost of transportation of the property sold is part of the sales price and included in the retailer's gross receipts. (R&TC, §§ 6011(a)(3), 6012(a)(3).) However, the sales price does not include separately stated charges for transportation from the retailer's place of business provided the exclusion does not exceed a reasonable charge. (R&TC, § 6011(c)(7); Cal. Code Regs., tit. 18, § 1628(a).) Transportation charges will be considered "separately stated" only if they are separately set forth in the contract for sale or in a document reflecting the contract, issued contemporaneously with the sale, such as the retailer's invoice. (Cal. Code Regs., tit. 18, § 1628(a).) The fact that the transportation charges can be computed from information contained on the face of the invoice or other document is not sufficient to be considered a separate statement. (*Ibid*.) To analyze whether the transportation charges should be excluded from the sales price, OTA examines the nature of each sale and when each sale occurred.

Sale for a Delivered Price

If the property is sold for a delivered price, the exclusion of separately stated transportation charges from the sales price only applies to transportation charges made after the sale. (R&TC, § 6011(c)(7); Cal. Code Regs., tit. 18, § 1628(b).) Regulation section 1628(b)(1) defines a delivered price as follows:

[7] Oxford English Dictionary (See https://dictionary.cambridge.org/us/dictionary/english/contemporaneous; https://www.dictionary.com/browse/contemporaneous; https://macmillandictionaryblog.com/contemporaneous.)

> Property is sold for a delivered price when the price agreed upon in the contract for sale includes whatever cost or charge may be made for transportation of the property directly to the buyer. A sale for a "guaranteed price" including a separately stated amount for transportation is a sale for a "delivered price." Property is not sold for a delivered price when the price is agreed upon and to this price is added a separately stated amount representing the cost or charge for transportation of the property directly to the buyer and any increase or decrease in the actual cost of transportation is borne by or credited to the buyer.

Here, the sales agreements for Advance and Garvey and the Addendum A for Royal all show the sale price of the equipment, delivered and installed. Addenda for Advance and Royal separate the purchase price of equipment from the freight and assembly charge, but the total price (not including sales tax) is the same as the total price in the original sales agreement. Even in a later invoice for Royal Paper, issued after delivery was complete, the total amount remained the same ($3,268,000). There is no evidence that the buyer was credited for lower-than-expected actual transportation costs or billed for higher-than-expected actual transportation costs. As such, the price agreed upon in the sale agreement (price of the equipment, delivered and installed) included the cost for the transportation of the property to the buyer. Therefore, OTA finds that the Advance, Royal, and Garvey sales were all sales of tangible personal property sold for a delivered price.

Security Agreement Sale

When a sale is made pursuant to a security agreement, in which the retailer retains the title as security for the payment of the sale price, the sale occurs when possession of the property is transferred by the retailer to the purchaser. (Cal. Code Regs., tit. 18, § 1628(b)(3)(A).) Here, the sales to Advance and Garvey were made pursuant to security agreements, where appellant retained title to the property until it received payment in full. Thus, OTA finds the sales to Advance and Garvey occurred when appellant transferred possession of the property to the buyers, after the transportation was complete.

For the sale to Royal, appellant asserts that, in the absence of an agreement, the default presumption is that a sale is consummated upon delivery to the common carrier. Here, however, appellant bears the burden to prove entitlement to an exclusion or exemption (i.e., the exclusion of the transportation charges from the sales price or taxable measure). (*Appeal of Owens-Brockway Glass Container, Inc.*, *supra*.) Also, since OTA has found CDTFA's determination to

be rational and reasonable, it is incumbent upon appellant to support its assertion that the Royal sale occurred upon delivery to the common carrier. (*Appeal of Talavera*, *supra*.) Of note, the evidentiary record does not contain a sales agreement for Royal, or any terms or conditions (such as those relating to delivery, risk of loss, or transfer of title). However, Addendum A and Addendum B both refer to a *New Press – Purchase and Sale Agreement*, and a *Part IV* quotation. This suggests that a *Part II* and a *Part III* were also part of the Royal sale agreement. In the Advance and Garvey sales, *Part II* contained appellant's standard terms and conditions and *Part III* contained appellant's security agreement. For the Royal sale, the evidence does not establish that the terms of sale were different from appellant's standard sales agreement. Further, appellant invoiced Royal for a balance due after the equipment had been delivered, which supports the conclusion that this sale was also made pursuant to a security agreement like the sales to Advance and Garvey. Accordingly, OTA finds that the sale to Royal was made pursuant to a security agreement. OTA finds that, like the Advance and Garvey sales, the Royal sale occurred when appellant transferred possession of the property to Royal.

Above, OTA found that the transactions were sales of tangible personal property sold for a delivered price. Thus, tax applies to relevant transportation charges unless (A) the transportation charges are separately stated, (B) the charges are for transportation from the retailer's point of business, and (C) the transportation occurs after the sale of the property is made to the buyer. (Cal. Code Regs., tit. 18, § 1628(b)(2)(A)-(C).) Here, because the sales at issue were made pursuant to security agreements, the sales occurred when appellant transferred possession of the equipment to the buyer, after transportation by common carrier was completed. In other words, the transportation occurred *before* the sale of the property, and does not comply with the requirements in Regulation section 1628(b)(2)(C).

As discussed above, the sales were made pursuant to security agreements, and thus, the sales occurred when appellant delivered possession of the equipment to the buyers. According to a FedEx delivery receipt, appellant delivered the equipment to Advance on January 21, 2016, but the document separately stating transportation charges is dated February 2, 2016 (12 days after delivery).[8] Although appellant's internal document indicates a delivery date of February 4, 2016, for Advance, OTA finds this evidence to be less reliable than the FedEx delivery receipt, which was completed by a third party. According to information from appellant's accounting system,

[8] There were 237 days between the initial sales agreement and delivery (May 29, 2015 - January 21, 2016).

appellant delivered the equipment to Royal on December 22, 2015,[9] but the document separately stating transportation charges is dated February 16, 2016 (56 days after delivery).[10] According to a FedEx delivery receipt, appellant delivered the equipment to Garvey on December 28, 2015, but the document separately stating transportation charges is dated January 22, 2016 (25 days after delivery).[11] Transportation charges will only be regarded as "separately stated" if they are set forth in the contract for sale or in a document reflecting the contract, issued contemporaneously with the sale, such as the retailer's invoice. (Cal. Code Regs., tit. 18, § 1628(a).) The fact that the transportation charges can be computed from the information contained on the face of an invoice or other document will not suffice as a separate statement. (*Ibid*.) Thus, the sales contract, or other document reflecting the contract issued contemporaneously with the sale, must explicitly state the cost of transportation, and not merely contain information that could be used to determine the amount of transportation charges. At the time of the sale, the buyer and seller must agree that a charge for a specific amount will be used to cover transportation costs, and a document must separately state that the specific amount is for transportation.

Here, because the transactions at issue were all sales made pursuant to a security agreement, the sales were completed upon transfer of possession from buyer to seller (i.e., at delivery). However, appellant asserts that the documents it issued after completing delivery (which separately stated transportation charges) were issued contemporaneously with the sale. The term "issued contemporaneously with the sale" is not defined in the Sales and Use Tax Law. However, OTA finds that documents appellant issued *after* a sale had already occurred could not have been issued contemporaneously with the sale. This is further supported by the substantial amount of time that transpired between the initial sales agreements or Addendum A and delivery (141 – 379 days). Further, OTA declines to adopt the definition of "contemporaneous" found in

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[9] There is not a delivery receipt for this delivery in evidence. The February 19, 2016 invoice indicates that the ship date was February 19, 2016. However, the invoice also shows Royal made two down payments on February 2, 2016, and the *Down Payment* document indicates that invoice is due 45 days after delivery, which is consistent with a December 22, 2015 delivery date.

[10] There were 141 days between Addendum A's execution and delivery (August 3, 2015 – December 22, 2015).

[11] There were 379 days between the sales agreement and delivery (December 23, 2014 – December 28, 2015).

IRC section 170 because IRC section 170 governs charitable deductions for federal income tax purposes, whereas the issue before OTA is the exclusion of transportation charges from California sales tax. Moreover, the unpublished court opinion regarding an unrelated sales and use tax exemption is inapplicable here, and thus appellant's reliance on that court opinion is unpersuasive.

OTA's interpretation of the word "contemporaneously," within the context of the exclusion, is supported by the precedential treatment of exemptions, which have an analogous effect to exclusions. That is, statutes granting exemptions from taxation must be reasonably, but nevertheless strictly, construed against the taxpayer. (*Standard Oil Co. v. State Bd. of Equalization* (1974) 39 Cal.App.3d 765, 769.) A taxpayer bears the burden of showing that its sales qualify for the exemptions. (*Ibid*.; *Appeal of Snowflake Factory LLC*, 2020-OTA-270P.) Further, any doubt must be resolved against the right to an exemption. (*Associated Beverage Co. v. State Bd. of Equalization* (1990) 224 Cal.App.3d 192, 211.)

In this appeal there is doubt based on the documents in evidence as well as the timing of the separately stated charges. At the time the relevant sales were completed, there were no sales documents separately stating the respective transportation charges. While addenda for Advance and Royal (issued before the respective deliveries) show transportation charges separate from the equipment charges, those transportation charges are combined with assembly charges as *Freight & Assembly*, and thus were not separately stated transportation charges. Although appellant issued subsequent invoices showing separately stated transportation charges (12 days after the Advance sale; 56 days after Royal sale; and 25 days after the Garvey sale), for sales and use tax purposes, the sales were already completed by that time. Therefore, OTA finds that appellant's transportation charges were not separately stated in documents issued contemporaneously with the sales.

Based on the foregoing, OTA finds that the transportation charges at issue are subject to tax.

Installation Charges

R&TC section 6006(b) provides that a sale means and includes the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting. (See also Cal. Code Regs., tit 18, § 1526(a).)

Generally, any services that are part of a sale are included in the sales price. (R&TC, §§ 6011(b)(1), 6012(b)(1).) The sales price, however, does not include the amount charged for labor or services rendered in installing or applying the property sold. (R&TC, § 6011(c)(3). Such labor and services do not include the fabrication of property in place. (Cal. Code Regs., tit. 18, § 1546(a).)

Here, appellant charged the buyers (Advance, Royal, and Garvey) a charge for installation of the equipment. According to appellant's standard terms and conditions, the buyers were responsible for providing materials needed for the installation of the equipment. Therefore, if the installation constituted "producing, fabricating, processing, printing, or imprinting," then any charges for that installation would be subject to tax. (See R&TC, § 6006(b).)

Appellant contends that all the component parts that "give the printing press its economic and retail value" are assembled in Germany, and the "value of that assembly is incorporated into the sales price for the printing press." Appellant argues that the installation charges do not increase the sales price of the printing press or change any substantive character of the printing press, and because there was no creation of a new product, there was no fabrication under Regulation section 1526(b). Moreover, appellant argues that its erection engineers merely reassemble the printing press and provide relatively minor services for purposes of activating the machine.[12]

CDTFA argues that appellant has not provided evidence that the printing presses were fully assembled in Germany before being shipped and reassembled upon delivery.

Here, the transactions at issue all involve the sale of standard printing presses *and* special accessories. The Garvey quotation includes an entry for "installation in the factory," suggesting that the special accessories were installed on the standard printing press at the factory, then disassembled for shipping. For the sales to Advance and Royal, however, there is no evidence that the special accessories were already installed in the standard printing press at the factory prior to being disassembled for shipping. In the absence of such evidence, OTA finds it more

[12] Appellant's opening brief indicated that two affidavits and a video were forthcoming as appellant's Exhibits 14, 15, and 16, respectively; thereafter, appellant did not submit those proposed exhibits. Prior to the oral hearing, as memorialized in both a December 29, 2022 Pre-Hearing Conference Statement Request and a February 9, 2023 Minutes and Orders of Prehearing Conference, OTA reminded appellant that it had not provided those exhibits. During the oral hearing, appellant referenced those exhibits in its argument, and requested to untimely submit them into evidence. Due to the absence of good cause for late submission of the proposed exhibits, OTA denied appellant's request. (Cal. Code Regs., tit. 18., § 30420(a).)

likely than not that, for the sales to Advance and Royal, appellant installed the special accessories to the standard printing press *after* delivery. Because the installed printing presses with the special accessories attached had not existed in that configuration before, the installation charges to Advance and Royal resulted in the creation of a new product. Therefore, the installation charges to Advance and Royal were for fabrication labor, and subject to tax.

For the sale to Garvey, the evidence reflects that special accessories were installed into the standard printing press at the factory, then disassembled for shipping before being reassembled after delivery. CDTFA's Sales and Use Tax Annotation (Annotation)[13] 435.0120 (8/31/53) concerns a taxpayer who sold conveyor equipment, assembled at its factory but disassembled for shipping. The taxpayer charged for the service of an engineer to supervise the labor to bolt the sections of equipment together and to bolt the equipment to the floor. In the annotation, CDTFA found that bolting the sections of equipment together was taxable assembly or fabrication labor, and that bolting the equipment to the floor was nontaxable installation labor. In Annotation 435.0143 (12/29/86), CDTFA found that if equipment is fully assembled then disassembled for shipment and reassembled at the buyer's place of business, the reassembling constitutes nontaxable reconditioning of the property rather than fabrication if (1) the charges for reassembly are separately stated, (2) title to the equipment passed to the buyer prior to its reassembly, and (3) the buyer was not required to hire the seller to do the reassembly as a condition to purchasing the equipment. CDTFA has consistently found that reassembly constituted nontaxable reconditioning labor under these conditions. (See also Annotations 435.0140 (11/14/67); 315.0090 (9/27/91); 435.0152 (10/7/94).)

Here, the Garvey sales agreement states that appellant will furnish personnel to supervise erection of the equipment and to demonstrate its use, and the Garvey *Part IV* quotation indicates that the price includes services of appellant's erection engineers. There is no indication that the use of such personnel was optional for the buyer. Furthermore, the Garvey sales agreement also states that the buyer will pay the cost of handling and will furnish and attach all necessary wiring to the equipment, ancillary labor to move and locate the equipment, and all necessary other mechanical or electrical devices, except when supplied as part of the equipment. Thus, it appears that the installation charges were mostly related to the *reassembly* of the printing press, that is,

[13] Annotations do not have the force or effect of law but may be entitled to some consideration by OTA. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 15; Cal. Code Regs., tit. 18, § 35101(a)(1); see *Appeal of Martinez Steel Corporation*, 2020-OTA-074P.)

putting the pieces of the equipment back together into a printing press, and not the *installation* of the equipment, that is, attaching the completed printing press to the necessary wiring and connecting it at the buyer's chosen location.

CDTFA contends that part of appellant's installation charges was for taxable training charges because appellant's erection engineers provided training on how to use the equipment. While there is certainly a "training" component to demonstrating the use of new equipment, OTA finds such training to be incidental to the installation of the equipment, intended to ensure proper installation and functionality rather than providing instruction on the use of the equipment. This finding is supported by the fact that appellant offered optional training sessions for sale. The *Part IV* quotations for Advance and Garvey both include optional training sessions, and all the down payment documents list a separate charge for training.

Appellant has not provided any evidence with which OTA can determine how much of the installation charge was for reassembly of the printing press or for installation of the equipment. Accordingly, OTA finds that appellant's installation charges to Garvey were for fabrication labor related to reassembly of the printing press, and subject to tax.

HOLDING

Reduce the measure of unreported taxable sales by $40,911. No further adjustments are warranted to the measure of unreported taxable sales.

DISPOSITION

CDTFA's reduction of the measure of unreported taxable sales by $40,911 is sustained. CDTFA's action in otherwise denying the petition for redetermination is sustained.

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Josh Aldrich
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Josh Aldrich
Administrative Law Judge

We concur:

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Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

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Keith T. Long
Administrative Law Judge

Date Issued: 5/25/2023