

**STATE BOARD OF EQUALIZATION**

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September 6, 1995

BURTON W. OLIVER
Executive Director

J--- M. T---
Controller
R--- & S---, Inc.
XXXX --- --- Street
--- ---, CA XXXXX-XXXX

Re: Sales and Use Tax Regulation 1521

Dear Ms. T---:

This is in response to your letter of April 3, 1995, regarding the application of sales tax to contracts R--- & S--- (R---) has and will perform on federal properties (Air Force bases). You note the following facts:

“R--- & S---, Inc. is a commercial plumbing contractor. We have, over the past four years, performed numerous sub-contracts at various federal installations. Most of these were subcontracts to one general contractor having defined-term maintenance contract for modifications; additions to buildings and facilities. As part of our subcontract, we have furnished and caused to be delivered to the facility large, expensive pieces of equipment manufactured and supplied by others. Our only function was the placement and installation or connection of this equipment to our piping system. These pieces of equipment have been boilers, compressors, etc., in the price range of \$30,000 plus.

“Since these pieces of equipment are delivered direct to the government facility, we never have ‘possession’ of them, and certainly would never be allowed to remove them from federal property. They are however billed to and paid for by us the same as any other component of the scope of work included in our contract. Once we install them we progress bill for them and they are approved for payment by the base authorities. These devices are activated (fired up, started) by the manufacturer. The government accepts the job in incremental inspections and

upon final inspection full payment is made for the unpaid balance of the contract.”

We understand that R--- has been paying sales tax reimbursement to its vendors on the purchase of boilers and compressors. We understand you believe that those sales to you are nontaxable sales for resale and your furnishing and installing the boilers and compressors on Air Force installations are exempt sales to the United States government.

Construction Contractors Other Than United States Construction Contractors

Construction contractors are generally consumers of materials they furnish and install in the performance of construction contracts. Either sales tax or use tax applies with respect to the sale of the materials to or the use of the materials by the construction contractor. (Reg. 1521, subd. (b)(2)(A)1.) “Materials” are items of tangible personal property, such as nails, lumber and paint, incorporated into, attached to, or affixed to, real property by contractors which, when combined with other tangible personal property, lose their identity and becomes an integral and inseparable part of the real property. (Reg. 1521, subd. (a)(4).)

Construction contractors are retailers of fixtures which they furnish and install in the performance of construction contracts, and tax applies to their sales of the fixtures. (Reg. 1521, subd. (b)(2)(B).) “Fixtures” are items of tangible personal property, such as water heaters or boilers, which are accessory to a building or other structure and which do not lose their identity as accessories when installed. (Reg. 1521, subd. (a)(5).)

Construction contractors are retailers of machinery and equipment which they sell to customers even when the contractor furnishes the machinery and equipment in connection with a construction contract. (Reg. 1521, subd. (b)(2)(C).) “Machinery and equipment” are items of tangible personal property, such as drill presses, which are intended for use in the production or manufacturing of tangible personal property, for the performance of services, or for other purposes not essential to the building or structure but which may be incidentally attached to the building without losing its identity as a particular piece of machinery or equipment. (Reg. 1521, subd. (a)(6).)

United States Construction Contractors

United States construction contractors are consumers of both materials and fixtures which they furnish and install in the performance of contracts with the United States government. (Reg. 1521, subd. (a)(3).) This means that tax applies to the sale to or use by R--- of such materials and fixtures.

United States construction contractors are retailers of machinery and equipment they furnish in connection with the performance of a construction contract with the United States government. (Reg. 1521, subd. (b)(1)(B).) This means R--- may purchase machinery and equipment for resale and its sale of the machinery and equipment to the United States is exempt from sales tax.

Your letter notes that you furnish large expensive pieces of "equipment." However, you go on to describe the equipment to be boilers and compressors in the price range of over \$30,000. You also note you place and install or connect the property to your piping system. We assume you mean R--- installs boilers and compressors to become accessories to a building or other structure. In such case, the items are fixtures as defined in Regulation 1521 at subdivision (a)(5).

If R--- furnishes and installs fixtures pursuant to construction contracts other than United States government contracts, R--- makes a retail sale of the fixtures subject to sales tax. Of course, R--- would be required to hold a seller's permit and report and pay sales tax on those sales.

When R--- furnishes and installs fixtures pursuant to contracts with the United States government, R--- is the consumer of the fixtures. Either sales tax applies to the sale of the fixtures to R---, or use tax applies to R---'s use of the fixtures. If the only contracts R--- performed were such contracts, R--- would not be required to hold a seller's permit. However, R--- would be required to register with this Board and report and pay use tax on the use in this state of fixtures which R--- purchases for use in this state from out-of-state retailers who do not collect the use tax from R---, such as retailers who are not engaged in business in this state. For example, if R--- purchased a fixture from a Nevada retailer who was engaged in business in this state, and the retailer shipped the fixture to R--- to install pursuant to a construction contract with the United States government, the Nevada retailer would be required to collect use tax from R---. If the Nevada retailer were not engaged in business in this state, or did not collect the tax even though it should have, R--- must report and pay the use tax directly to this Board.

If R--- were to sell items of machinery and equipment to the United States government and pass title to the United States without making an intervening use of the property, tax would not apply to the sale of the property to R---, and R---'s sale of the property to the United States would be exempt from sales tax. (Reg. 1521 (b)(1)(B).) In such case, R--- is required to hold a seller's permit regardless that all of its sales are to the United States. (Reg. 1521, subd. (b)(4).)

Given that R--- apparently furnishes and installs fixtures pursuant to contracts with the United States government, and R--- is the consumer of those fixtures, there does not appear to be a basis for a refund of sales tax on the sales of the boilers and compressors to R---.

If you have any further questions, please do not hesitate to write. I am enclosing a copy of Sales and Use Tax Regulation 1521 and Sales and Use Tax Regulation 1700 for your review and information.

Sincerely,

Anthony I. Picciano
Staff Counsel

AIP:es

Encs.: Regs. 1521 & 1700

cc: --- District Office - -