

**STATE BOARD OF EQUALIZATION**

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March 31, 1995

SENT BY FAX AND REGULAR MAIL

J--- S---, Esq.
A--- & K---
XXXX --- Avenue, Suite XXX
---, CA XXXXX

Re: Sales and Use Tax Liability
of T--- R--- Tribe Contractors

Dear Mr. S---:

This is in response to the request for a legal opinion set forth in your letter dated January 12, 1995.

In your letter, you state that the T--- R--- Indian Tribe (the Tribe) has federal grants to construct low-income houses on the T--- R--- Indian Reservation and that, pursuant to those grants, the Tribe has hired a non-Indian general contractor to carry out the construction project. You further state that the non-Indian general contractor has contracted with various sub-contractors to "perform certain construction services and procure construction materials and fixtures."

Finally, you state that the Board's Visalia office has denied seller's permits to the Tribe's construction contractors, whom you contend "should not be liable for State sales taxes."

Contrary to this contention, however, subdivision (d)(4)(C)(2) of section 1616 of the Board's Sales and Use Tax Regulations provides as follows:

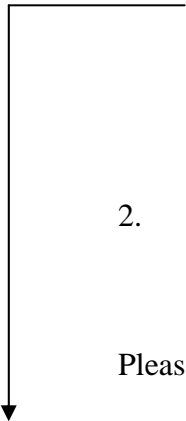
- "2. Non-Indian contractors. Sales tax applies to sales of materials to non-Indian contractors notwithstanding the delivery of the materials on the reservation and the permanent attachment of the materials to realty. Sales tax does not apply to sales of fixtures furnished and installed by non-Indian contractors on Indian reservations." [Emphasis added.]

Under the sales and use tax law as it applies to construction contracts, it is necessary to determine whether or not a contractor is utilizing "materials" in performing its contract, or, on the other hand, is a retailer of a "fixture" within the meaning of Regulation 1521(b)(2). A "fixture," as set forth in Regulation 1521(a)(5), is an "accessory" to a building which, upon installation, does not lose its identity as an accessory; such as, an air conditioning unit, an awning, etc.

While you assert in your letter that the imposition of sales tax on the sale of materials to non-Indian contractors "is not permitted by California or Federal law," you fail to cite any authority substantiating this assertion. Thus, we are unable to agree with your position.

As a result, our conclusions in this matter are set forth below:

1. The Board should issue seller's permits only to those contractors who are going to be engaged in the sale of fixtures; and those contractors will only be authorized to utilize their seller's permits with respect to the purchase for resale of fixtures (as that term is defined in the Board's Sales and Use Tax Regulations). These contractors will not be authorized to utilize their seller's permits with respect to the purchase for resale of materials.
2. The Board should not issue seller's permits to those contractors who are merely going to consume materials in the course of carrying out their construction contracts.



Please call if you have any questions or comments with regard to this letter.

Unless they qualify as retailers of the materials under Reg. 1521.
DHL 7/6/01

Very truly yours,

Robert W. Lambert
Senior Staff Counsel

RWL:plh

T---L01

cc: Mr. Glenn Bystrom
Mr. Gary Jugum
Mr. Peter Smith - DHD