STATE BOARD OF EQUALIZATION

November 2, 1966

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This is in answer to your request for our opinion as to the application of California sales and use taxes to concrete pumping operations.

Under the facts, as we understand them, certain pumping equipment is mounted on a flat-bed truck or may be removed from the truck and placed on the ground. The pumping equipment has a hopper into which concrete is discharged from ready-mix trucks. The concrete is then pumped through large diameter pipes or hoses to the place of use. We understand that concrete may be pumped as high as 13 stories by this method. The pumping equipment is furnished with an operator who is responsible for conducting the pumping operation and maintaining the equipment. The owner of the equipment makes an hourly charge for the pumping service. The owner may be the retailer who is furnishing ready mexed concrete or he may be a pump specialist who has no connection with supplying the ready mix. You have asked for our opinion as to the application of sales and use taxes to the charges made for such pumping.

It appears that the pumping operation performs a single function, that of transporting the concrete from one point to another. We are of the opinion, therefore, that the charges made for this function should be treated as transportation charges for sales and use tax purposes. Accordingly, the provisions of §§ 6011 and 6012 of the Revenue and Taxation Code, relating to transportation delivery charges, and ruling 58 [now regulation 1628], copy enclosed, would be applicable.

Where the pumping is done by ready-mix suppliers, paragraphs (b) and (d) of ruling 58 would be particularly applicable. Generally speaking, tax would apply to the pump charges because the transportation would be by the retailer's facilities and title to the concrete would not be considered to have passed until it reached the place specified by the purchaser. Please note, however, that a properly drafted written agreement entered into by both parties prior to the transportation may provide that title to the concrete may pass prior to final delivery. Charges for transportation after title to the property has passed to the purchaser, which are separately stated and reasonable in amount, are not taxable.

Pumping performed by a third party who has no connection with the concrete being pumped does not appear to be taxable. The one exception to this statement which occurs to us is the possibility that the pumping equipment would be considered to be rented or leased. Pursuant to a recent change in the law, leases of tangible personal property for a consideration are generally taxable (see §§ 6006 and 6010 of the California Sales and Use Tax Law, and ruling 62, copies enclosed). Whether a particular arrangement is, in fact, a rental is a question in fact in each case.

The chief characteristic of a rental is the giving of possession and control over the property to the hirer. Where the equipment is furnished with an operator, the question is the degree of control over the operator. Many of the factors considered by the courts in determining questions of this nature may be found in Entremont v. Whitsell, 13 Cal. 2d 290 [68 P. 2d 964]. Generally speaking, we would believe that the situation you have described would be treated as a rental of equipment.

If you have any comments or questions regarding the foregoing, we would be pleased to hear form you.

Very truly yours,

Richard H. Ochsner
Associate Tax Counsel

RHO:md

Encl.
cc: San Francisco – District Administrator
Mr. John H. Knowles