



STATE BOARD OF EQUALIZATION

(916) 445-3723

December 7, 1990

Dear REDACTED TEXT,

This is in response to your facsimile transmission of December 6, 1990.

We understand that REDACTED TEXT is in the process of bidding a supply contract with the Federal government at REDACTED TEXT A.F.B. Prior to bidding the project, REDACTED TEXT needs to make sure that it is properly addressing the California sales and use tax laws.

The contract will be a supply contract that has three basic portions. The first portion includes providing some basic services to the government. These services are architectural and engineering services. The second portion of the contract includes construction work to be completed on the base. This work includes site excavation, utilities, and foundation work. The third portion of the contract involves the leasing of a modular, prefabricated building that comes under the regulation of the Department of Housing.

We can confirm our advice to you by telephone of December 6, 1990, as follows:

- (1) Neither California sales tax nor use tax applies on the engineering fees without regard as to whether the engineering work is done by companies outside of California or done by companies in California.
- (2) With respect to site improvement work, application of tax is determined by our Regulation 1521, "Construction Contractors". Under that regulation, contractors are consumers for California sales and use tax purposes of all fixtures and materials incorporated into site improvements. This means that sales tax applies to sales of materials made by California vendors to you as the contractor or to subcontractors. California use tax applies to materials purchased outside this state and incorporated into site improvements in this state.
- (3) If materials are purchased in Texas, California use tax must be paid when the materials are brought into California. Credit could be taken against the California use tax for any sales or use tax paid in Texas, under Revenue and Taxation Code section 6406.
- (4) Under our Regulation 1521, paragraph (c)(3), "prefabricated units such as commercial coaches, house trailers, etc., registered with the Department of Motor Vehicles or the Department of House and Community Development, are tangible personal property even though they may be connected to plumbing and utilities." We cannot say that all modular prefabricated buildings built to the California Housing Regulations are classified as tangible personal property. Our regulation provides that the fabricated unites "registered" with the Department are tangible personal property. The manner of attachment to land is irrelevant.

(5) As stated, fabricated units registered with the Department of Housing and Community Development are tangible personal property. Neither sales tax nor use tax applies to the sale or lease of such property to the federal government.

(6) It makes no difference if the company or companies that are manufacturing, selling or leasing the modular buildings are located outside the state of California.

(7) If a Texas subcontractor performs work on the modular building, such as providing and installing the lights in the building, tax does not apply to the subcontractor's charges or to the materials that become a part of the tangible personal property sold or leased to the federal government.

(8) If a California subcontractor performs work on the modular building, such as providing and installing lights, the materials provided by the subcontractor are also exempt from sales or use tax if the building is sold or leased to the federal government. If the subcontractor has a California seller's permit, he may purchase the materials without paying California tax by issuing a resale certificate to the vendor.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

GJJ:sr