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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

July 26, 1967

Gentlemen:

This is in regard to the determination of sales tax which has been made with respect to your sales of building materials to REDACTED TEXT Management Broker. "G" purchased the materials for use in repairing, reconditioning, maintaining, and improving REDACTED TEXT, a housing project owned by the Federal Housing Administration.

As indicated in the letter written to you on April 11, 1967 by Mr. J. A. Carter, District Principal Auditor, the legal staff examined a copy of the contract between the Federal Housing Administration and REDACTED TEXT and concluded that sales of building materials to REDACTED TEXT for use in fulfilling his obligations under that contract were not exempt from the California sales tax.

On May 26, 1967, the Director of the Federal Housing Administration sent you a copy of an opinion from the Chief of that administration. In his opinion, the Director stated his conclusion that since REDACTED TEXT was acting on behalf of the Federal Housing Administration when he ordered the materials from you, the sale of the materials was to the federal government and was, therefore, exempted from the California sales tax under Section 6381 of the Revenue and Taxation Code. We cannot agree with this conclusion.

Section 6381(b) of the Revenue and Taxation Code provides for the exemption from the sales tax of the gross receipts from the sale of tangible personal property to any incorporated agency or instrumentality of the United States wholly owned by the United States, or by a corporation wholly owned by the United States. Although this section provides for a general exemption from sales tax for sales of tangible personal property to the United States and its instrumentalities, two other sections of the Revenue and Taxation Code specifically cover the type of sale made to REDACTED TEXT and provide for the application of the sales tax.

Section 6007.5, effective September 7, 1955, provides:

“A sale of tangible personal property to a contractor or subcontractor for use in the performance of contracts with the United States for the construction of improvements on or to real property in this State is a retail sale. The gross receipts from such a sale or the sales price of property so sold shall be included in the measure of the taxes imposed by this part.”

Section 6384 also effective September 7, 1955, provides:

"Notwithstanding any other provision of law the tax imposed under this part shall apply to the gross receipts from the sale of any tangible personal property to

contractors purchasing such property either as the agents of the United States or for their own account and subsequent resale to the United States for use in the performance of contracts with the United States for the construction of improvements on or to real property in this State."

In view of the specific provisions of Sections 6007.5 and 6384, notwithstanding the conclusion reached by the Director of the Federal Housing Administration, it is our opinion that sales of tangible personal property to REDACTED TEXT for use in repairing, reconditioning, maintaining, or improving REDACTED TEXT are subject to sales tax. Accordingly, no adjustment can be made with respect to the determination of sales tax on account of such sales.

Very truly yours

George A. Trigueros
Tax Counsel

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