State of California

Board of Equalization
Legal Division

565.1141

Memorandum

To: Mr. Mike Hilbert
      Aerospace Claims Coordinator
      Audit Review and Refund Unit

Date: December 14, 1992

From   John L. Waid
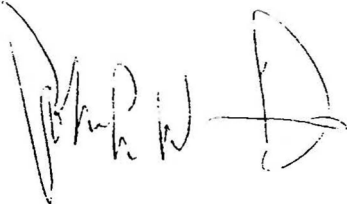   Tax Counsel

Subject: Aerospace Refunds
           Alternate Title Clauses

I am answering your memorandum to me of September 23, 1992. You attached to it a memorandum to you from Lloyd Geggatt, an auditor in the San Diego district office. Mr. Geggatt attached to his memorandum copies of FAR 52.216-7 and 52.216-13, clauses which various contractors have asserted created accelerated title passage. You indicate that you are of the opinion that these clauses merely define certain allowable costs and indicate how payments will be made and do not affect title to the property purchased.

FAR 52.216-7 is entitled "Allowable Cost and Payment," and is inserted in solicitations and contracts when a cost-reimbursement contract (other than a facilities contract) is contemplated. (FAR 16.307(a).) FAR 52.216-13 is entitled "Allowable Cost and Payment-Facilities" and is inserted in solicitations and contracts when a cost-reimbursement consolidated facilities contract or a cost reimbursement facilities acquisition contract is contemplated. (FAR 16.307(g).)

We agree with your assessment. While FAR 52.216-7 may have an effect on title passage by determining what costs are allowable in cost-reimbursement contracts other than facilities contracts, it does not purport to accelerate title to property purchased by the contractor. Accelerated title passage in cost-reimbursement contracts occurs only if FAR 52.245-5 is present. FAR 52.216-13 likely has little effect on title passage since it applies to facilities contracts, and persons engaged in contracts with the United States to improve real property are the consumers of the tangible personal property they purchase to use in the performance thereof. (§ 6384.)

Thus, neither of these clauses provides for accelerated passage of title under Aerospace.

JLW:es

Title-3.mem