



STATE BOARD OF EQUALIZATION

August 30, 1967

A--- H--- Co. of California
XXXXX East --- Highway
---, CA XXXXX

Attention: Mr. C--- G. T---
Controller

SR --- XX XXXXX

Gentlemen:

Your letter of April 27, 1967, to Mr. John Quick, Principal Tax Auditor, of our Pasadena office has been directed to the undersigned for direct reply to you. Due to a heavy backlog of work and legislative matters this summer, I was not able to answer your letter until the present time. I sincerely hope my delay has not caused you any great inconvenience.

It is our understanding that your company is primarily engaged in the manufacture and sale of conveyor equipment. From your letter and attached material, it appears that you have recently manufactured and delivered an "integrated conveyor equipment system" and other items of property, presumably under a contract to furnish and install a so-called "rock plant" for another. We also understand that the primary purpose of the rock plant is to manufacture rock aggregate for use in concrete, asphalt, and balast.

In regard to plant operations, you state the following:

"The vault or pit receives the large rock, which is then transferred to the crusher. Here the rock is crushed, then conveyed through various screening operations, which sort down the aggregate into its various sizes. While the rock is being screened it is also washed by means of various spraying systems. At this point the different size aggregates are then conveyed to individual stock piles."

Specifically, you ask what sections or units of the rock plant would be regarded as fixtures, materials, and/or equipment under sales and use taxes ruling 11. You also ask what portions of your engineering services under the construction contract are taxable, if any.

The application of sales and use taxes to construction contractors is stated in ruling 11, copy enclosed. A construction contractor is a consumer of the "materials" he may use in fulfilling his construction contract by combining those materials with other tangible personal property in a manner which causes the materials to lose their identity and become integral and inseparable parts of the completed structure. Also, contractors are regarded as the individual retailers of any "fixtures" each may furnish and install, and the sales tax applies to the retail selling price of such fixtures and is reported and paid to the state by the contractor.

Business Taxes General Bulletin 67-9, copy enclosed, affords a further explanation of the application of the tax with respect to elevator and conveying unit installations. If you both furnish and install hoists and conveying units (i.e., "fixtures") under a construction contract, it would appear that your tax liability under such a contract would be governed by ruling 11 and Business Taxes General Bulletin 67-9.

While we are not certain as to the application of the tax to your engineering design services under the above mentioned construction contract, we can state in general terms the application of the tax to engineering services.

Under the Sales and Use Tax Law, if a person contracts to sell tangible personal property, his gross receipts which are subject to tax include, under the express provisions of §6012, "Any services that are a part of the sale." There cannot be deducted therefrom, "The cost of the materials used, labor or service cost, interest paid, losses, or any other expense." Therefore, if a manufacturer undertakes to manufacture and sell a given article of personal property and in order to perform that contract must incur costs for engineering design, we believe that such costs cannot be excluded from the measure of the tax even though separately state.

On the other hand, that portion of an engineering service charge (i.e., drawings, plans, and diagrams, etc.), which relates solely to the general layout arrangement and integration of the various items of machinery and equipment, would be considered as a charge for installation and application of property and, therefore, not subject to the tax.

We trust that the foregoing has been helpful in determining the application of the tax to your construction contract. However, if you have any further questions relating to this matter, please do not hesitate to write to our district office in your area which is located at 111 South Hudson Avenue, Pasadena 91101, telephone 681-6675. Also, you may always feel free to write to this office again.

Very truly yours,

Elliott D. McCarty
Assistant Counsel

EDM:LT
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