



STATE BOARD OF EQUALIZATION

February 19, 1953

R--- C---, Inc.
XXXX --- Boulevard
--- --- X, California

Your letter of September 23, 1952

Account No. -- XXXXX

Attention: Mr. C. J. C---

Gentlemen:

The application of sales tax to construction contractors generally is stated in Sales and Use Tax Ruling 11 (copy enclosed). As indicated, contractors and subcontractors are regarded as performing the service of improving real property and while performing such services are consuming "materials". Contractors are, however, regarded as selling "fixtures" at retail and sales tax therefore applies to the retail selling price of such fixtures.

The Sales and Use Tax Law provides that the price received for installing or applying property sold is not subject to sales tax. Since in the usual lump-sum construction contract it is impossible to determine the price the contractor is charging for the sale of "fixtures" and the price he is charging for installation and other services, this Board has in Ruling 11 established the rule that in lump-sum construction contracts the "fixtures" will be regarded as being sold at cost. (See that section of Ruling 11 headed "Fixtures Furnished and Installed by Contractors.")

Ruling 11 applies only to contractors and subcontractors actually doing the construction work. In the case of "fixtures" it is the installing contractor or subcontractor who is regarded as making the taxable retail sale of the fixtures. Once the fixtures have been attached to the realty, any "sale" of the fixtures would be regarded as a sale of real property and therefore not subject to the sales tax.

Any work done for you by a subcontractor which involves the furnishing and installation of fixtures by the subcontractor results in a taxable retail sale of the fixtures to you. Such sale is subject to sales tax, the measure of the tax to be determined by Ruling 11 and in the usual case being only a portion of the total price.

Since your subcontractor who installs sheet metal ducting is charging you sales tax on his entire price, it is obvious that he is overpaying sales tax. Since he is the manufacturer of the ducting

and on the assuming that the ducting is a "fixture", the correct measure of tax is as stated in the last sentence of that section of Ruling 11 headed "Fixtures Furnished and Installed by Contractor".

It is our opinion that the bulk of a pneumatic transit tube system falls within the classification "materials" rather than "fixtures". Accordingly, the sale to you of the elements of the system is subject to either the sales tax or the use tax, the measure of the tax being your cost price. Items such as meters and fans and ducting used directly with the meters and fans are regarded as "fixtures". But as to such "fixtures" which you install, the measure of the tax will probably be your cost price.

We suggest that you telephone our Los Angeles office, Madison 6-6381, and make an appointment with Mr. Philip E. Rose who will be able to help you to arrive at a proper adjustment of your problem.

We are sorry that we temporarily mislaid your letter.

Yours very truly,

W. W. Mangels
Assistant Counsel

BM:ja

cc: Los Angeles – Review (PER)

Note last paragraph wherein we refer the addressee to you. Addressee installs pneumatic conveying systems, mostly "materials", some items such as motors and blowers are "fixtures". Possibly the sheet metal subcontractor is retailing "fixtures" to addressee since said ducting apparently is closely adjacent to the fan and blower.