



STATE BOARD OF EQUALIZATION

January 24, 1961

Attention: Mr. -----

Re: -----

Gentlemen:

This is to confirm the opinion expressed to you during our telephone conversation of January 23, 1961 regarding the application of California sales tax to sales of materials to out-of-state construction contractors. Enclosed is a copy of Sales and Use Tax Rule 11 relating to contractors generally.

You will recall that we stated such sales were subject to the California tax if the delivery of the property to the contractor was effected in this state. In making this statement, we assumed that the out-of-state contractor does not have a valid Seller's Permit issued under Section 6068 of the California Sales and Use Tax Law, pamphlet copy enclosed, and could not therefore qualify for the exemption granted by Section 6386 of the Law. It should be understood that even if the particular contractor has a Seller's Permit issued by the state of Montana, the requirements of Section 6386 would not be fulfilled.

If the person to whom you are selling the materials is in fact a retailer, as well as a construction contractor, then it would be proper to accept a resale certificate as described in Ruling 68, copy enclosed, provided the person to whom you sell is unable to tell at the time of purchase whether the property will be consumed or resold.

Very truly yours,

J. J. Delaney
Associate Tax Counsel

JJd:ls
Enclosure

cc: Chicago (OFH)

M e m o r a n d u m**190.2720**

To: Torrance – District Principal Auditor

July 24, 1987

From: Headquarters – Tax Counsel (HLC)

Subject: Exemption Under Section 6386

Several weeks ago you inquired whether an out-of-state construction contractor who does not hold a California seller's permit could purchase materials ex-tax under section 6386 in California if the state in which the construction contract is performed treats construction contractors as retailers of materials. You cited language from Business Taxes Law Guide, Annotation 190.2720 (January 24, 1961) as indicating that the out-of-state contractor could purchase ex-tax under section 6386.

At that time I told you that it was the position of the legal staff that a resale certificate was improper since under California law, the contractor consumes and does not resell materials. An exemption certificate is also improper because section 6386 specifically applies only to holders of California seller's permits. I also told you that in view of the language of the cited annotation, I would verify our position with Principal Tax Auditor Glenn Bystrom.

Mr. Bystrom has reviewed this problem and concurs with the position of the legal staff. When transactions take place in California, they must be bound by California law and definitions. To do otherwise would put us in the position of attempting to apply and interpret the tax laws of other states. A contractor's remedy if he is taxed in the state in which the construction takes place as well as in California is to take delivery of the material in the other state or seek relief in the other state under an offset statute similar to section 6406.

We will take steps to put the annotation into agreement with this position.

HLC:md

cc: Mr. G. A. Bystrom
Mr. D. J. Hennessy