

435.1263

## Memorandum

To: Mr. Dennis Fox, Supervisor  
Audit Evaluation and Planning Section

Date: October 20, 1995

From: Warren L. Astleford  
Staff Counsel

Subject: V--- B---, Inc.  
SR -- XX-XXXXXX

This is in response to your memorandum dated September 20, 1995 to Supervising Staff Counsel David Levine regarding the application of tax to various landfill operations undertaken by V--- B---, Inc. (hereafter "the taxpayer").

You state:

"[T]he taxpayer is a wood recycler operating on leased property inside the landfill for the purpose of processing green waste (leaves, tree and grass clippings, shrubbery, etc.) provided by [the] County [of ---] [(hereafter 'County')] to use as an alternate daily cover for their landfill. Persons bringing green waste to the landfill are directed to deposit the material at the taxpayer's site on the landfill. The taxpayer processes the green waste by 'chipping' the green waste into a suitable landfill cover material used as an alternative to native soil."

"The cover material is loaded into a truck subcontracted by taxpayer and is driven to a weighing station at the landfill. After the material is weighed, it is delivered to an active cell of the landfill. Taxpayer deposits the cover material at the designated point but does not spread the material so as to place it in its final resting place. Taxpayer is paid \$28.26 per ton for the first 12,600 processed tons in a calendar year and \$21.18 per ton from 12,600 to 15 (of green waste processed) tons in a calendar year. Taxpayer is also compensated at \$2.04 per ton of suitable cover material delivered to and accepted by [the] County."

You ask whether tax applies to the activities undertaken by the taxpayer. You also ask whether tax applies to the charges for transporting the cover material from the taxpayer's work site to the landfill area. To facilitate our response, you provided us with a copy of the "Processing and Supply Agreement" (hereafter "agreement") between the taxpayer and County.

### Discussion

Tax is imposed on a retailer's gross receipts from the retail sale of tangible personal property inside this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) "Sale" means and includes "the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration ...." (Rev. & Tax. Code § 6006(b).) Regulation 1526(a) states that "tax applies to charges for producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting."

The agreement between taxpayer and the County provides that taxpayer will supply cover material consisting of chipped, non-hazardous green waste<sup>1</sup> collected from the County's landfill. (See, e.g., agreement pp. 1, 7.) To do so, taxpayer will operate various equipment at the County's landfill site which converts green waste into the landfill cover material. The agreement between the parties states that taxpayer will "produce" or "process" the cover material from the green waste provided by the County. (See agreement, p. 1; see also ¶¶ 7.3, 7.3(b), 7.3(e), 7.3(j).) We understand this to mean that taxpayer will physically alter the composition of the County's green waste through a chipping processing undertaken by its machinery and equipment in order to produce the landfill cover. Under these facts, we agree with your analysis that taxpayer is performing taxable fabrication. The annotations you cite in your memorandum (BTLG Annot. 435.0620 (2/24/56) (the crushing of materials furnished by a consumer constitutes processing and is subject to tax); Annot. 435.1390 (3/10/71) (the crushing of rock constitutes taxable fabrication labor)) support this conclusion and apply to taxpayer's operations. Thus, tax applies to the gross receipts received by the taxpayer for the processing of the County's green waste material.

The application of tax to taxpayer's transportation charges depends on whether these charges are part of its taxable gross receipts. Gross receipts do not include separately stated charges for transportation of property from the retailer's place of business (or other point from which shipment is made directly to the purchaser) provided the transportation is by other than facilities of the retailer. (Reg. 1628(a).) In addition, gross receipts do not include charges for transporting landfill material removed from the ground and transported from an excavation site to a site specified by the purchaser where such charges are either separately stated and reasonable, or which relate solely to payment for transportation. (Reg. 1628(c).) "Sand, dirt or gravel" are examples of "landfill material." (Id.)

The agreement separately states that the taxpayer will be paid \$2.04 per ton for the delivery of the cover material from its processing site to a specific area of the County's landfill.

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<sup>1</sup> "Green waste" is defined as "non-hazardous waste including, but not limited to, leaves, vines, grass clippings and shrubbery, and tree clippings." (See agreement ¶ 7.2.)

(See agreement, Article 5; ¶ 7.3k.) You further state that taxpayer subcontracts its delivery responsibilities to a third party. Pursuant to Regulation 1628(c), taxpayer's transportation charges are not excluded from its gross receipts since the taxpayer is not transporting landfill material from an excavation site to a landfill site specified by the purchaser. Instead, taxpayer's transportation charges are solely for the movement of processed cover material from its processing site (a non-excavation site) to an area designated by the County. However, the taxpayer's transportation charges may be excluded from its gross receipts pursuant to Regulation 1628(a) provided its charges for transportation do not exceed the taxpayer's cost of transportation. (Taxpayer meets the other requirements of Regulation 1628(a) since the transportation is by facilities other than those of the taxpayer and the agreement separately states the charges for transportation.) Thus, the taxpayer may be able to exclude its transportation charges pursuant to Regulation 1628(a) (where its charges do not exceed its cost of transportation), but may not do so pursuant to Regulation 1628(c).

If you have any additional questions, please write again.

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cc: Mr. David H. Levine