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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001

TELEPHONE (916) 323 - 0823

August 22, 1990

REDACTED TEXT

Re: REDACTED TEXT

Dear Mr. REDACTED TEXT:

I have received your Request for Reconsideration dated June 5, 1990. After consideration of your request, it is my conclusion that I am unable to recommend any adjustment.

The Decision and Recommendation on this matter, dated April 2, 1990, is attached hereto and incorporated herein as Exhibit A. You requested, and were granted, an extension of the 30-day period to file a timely Request for Reconsideration. Your Request for Reconsideration, dated June 5, 1990, is incorporated herein as Exhibit B. The Department of Business Taxes ("DBT") responded to your request of July 12, 1990. A copy of the DBT response is incorporated herein as Exhibit C.

On March 20, 1990, the Court of Appeal issued its decision in Aerospace Corporation v. State Board of Equalization (1990) 218 Cal.App.3d 1300. That case involved a company which purchased certain property for utilization in contracts with the U.S. Government. The property was purchased by the taxpayer under issuance of resale certificates. The taxpayer resold the property to the U.S. Government pursuant to contractual provisions which transferred title to the government prior to any use by the taxpayer in the performance of its contracts.

The court held that the taxpayer's vendors were not liable for sales tax because they had acquired resale certificates evidencing the taxpayer's intention to resell the property. Likewise, the taxpayer's sale of property to the U.S. Government was exempt from tax under Revenue and Taxation Code Section 6381. Finally, the court held that the taxpayer was not liable for use tax because title transferred pursuant to express contract provisions prior to any use of the property by the taxpayer. The court held that Sales and Use Tax Regulation 1618 was invalid because it established that title to certain overhead materials passed to the government after use of the materials, notwithstanding a contrary title clause.

Sales and Use Tax Regulation 1546(b)(3)(C) provides that the person furnishing the parts and materials pursuant to an optional maintenance contract is regarded as the consumer thereof. The hearing decision (Exhibit A) cited that authority as dispositive with respect to petitioner's use tax liability.

In this case, title to the x-ray tubes passed to the Veterans Administration upon petitioner's installation of the tubes. (See Section 8(b) of the contract.) Petitioner made no use of the tubes prior to installation, and installation constituted the act of delivery.

Your Request for Reconsideration essentially sets forth the proposition that, since no use was made of the x-ray tubes prior to the transfer of title, petitioner cannot be subjected to use tax, notwithstanding the contrary provisions of Regulation 1546(b)(3)(C). In short, you contend that Regulation 1546 (b)(3)(C) suffers from the same effect as Regulation 1618, at least as to contracts with the U.S. Government, because it defines the person furnishing the parts and materials as the consumer regardless of a contrary title provision.

Since acceptance of your argument is contingent upon finding Regulation 1546(b)(3)(C) to be at least partially invalid, and because it is my understanding that I do not have that authority, I must adhere to my original recommendation that the deficiency determination be redetermined without adjustment.

If you wish to have an oral hearing before the Board, a written request must be filed with Ms. Janice Masterton, Assistant to the Executive Director, Board of Equalization, P.O. Box 942879, Sacramento, CA 94279-0001, within thirty (30) days from the date of this letter. If such a request is not timely received, the Hearing Decision and Recommendation will be presented to the Board for final consideration and action.

Very truly yours,

John B. Adamo
Supervising Hearing Officer

JBA:dl

Enc.

cc: Ms. Janice Masterton
Assistant to the Executive Director (copy of request attached)

Mr. Glenn Bystrom
Principal Tax Auditor (file attached)

Petition Unit

Torrance – District Administrator