

**STATE BOARD OF EQUALIZATION**

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May 12, 1989

Mr. J--- J. M---  
Senior Vice President  
G--- A---  
XXXX --- ---, Suite XXX  
--- ---, CA XXXXX

Dear Mr. M---:

This is in reply to your March 13, 1989 letter regarding the application of sales tax to sales of tangible personal property to GPC, a Joint Venture of G--- A--- of --- ---, California and P--- C--- & Co., Inc., which GPC will use in fulfilling a contract with the Department of the Navy (Navy).

You note that GPC was recently awarded two contracts by the Navy to provide certain offshore pollution control operations. One of the bases at which GPC will operate is in ---, California. One of the functions of the --- base will be to purchase non-construction materials which are required by GPC to comply with the terms and conditions of the contracts. You note that, under the contract, GPC will issue purchase orders to its vendors to purchase the materials. GPC will pay the vendors for the property, and the Navy will reimburse GPC. You note that, all materials purchased in such manner are the property of the Navy upon receipt. We assume that you mean that the contract provides that title to the property passes to the Navy upon receipt by GPC and, consequently, prior to any use of the property by GPC. Given this information, you asked:

- “1. As the purchases made by GPC are directly in support of the U.S. Navy contracts and none of the acquired materials become GPC property, can GPC be exempted from Sales and Use Tax in California?”

We are enclosing a copy of Sales and Use Tax Regulation 1618, United States Government Supply Contracts, which provides generally that, a person who has a contract with the United States to furnish equipment to the United States may purchase tangible personal property for resale if the United States takes title to the property prior to any use of the property by the contractor to perform the function or act for which for which the property was designed for manufactured.

You have not directed us to any specific provision or provisions of the contracts which GPC believes transfers title to the property to the Navy prior to use. Rather than our poring over the entire two contracts and the Federal Acquisition Regulation clauses which have been incorporated

into the contracts by reference, please review the contracts and advise us of the specific provisions and the questions you have regarding the application of tax.

I did briefly review the contracts and noticed some areas of concern. For instance, on page 30 of the contract N00024-89-D-4013, paragraph 8(a) provides that, when the government requires supplies in an amount of less than \$1,000.00, the government is not obligated to purchase those supplies. If the government exercises its election not to purchase the supplies, then the sale to GPC of such property for use in fulfilling the contracts is subject to tax.

Also, on page 38 of the same contract, there is a provision relating to a Restricted Rights Legend that states "Title to and ownership of the software and documentation shall remain with the Contractor." If, pursuant to that provision, GPC does not transfer ownership of software to the Navy, tax applies to the sale to GPC of such software, because GPC does not sell the software to the government.

We reiterate that we have not closely examined the contracts; therefore, there may be other provisions in the contracts which may cause GPC to be the consumer of tangible personal property it purchases to fulfill the contracts with the Navy.

"2. Does GPC require any licenses, permits or certificates to provide the purchasing services defined in the contracts?"

We are unable to locate a record of a seller's permit issued in the name of GPC. Since GPC is a separate entity from either G--- A--- or P--- C--- & Co., GPC is required to hold a seller's permit. See Revenue and Taxation Code sections 6005, 6066; Sales and Use Tax Regulation 1695.

Very truly yours,

Ronald L. Dick  
Tax Counsel

RLD:sr

Enc.