



565.0440

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

October 31, 1967

Dear Mr. REDACTED TEXT,

Numerous letters have been written regarding your client's claims for refund for the periods 1/1/62 to 12/31/64 for \$10,000 estimate, and 1/1/59 to 12/31/61 for \$20,000 estimate, and your client's petition for redetermination for the audit period 1/1/59 to 6/30/62. The determination for the period 1/1/63 to 9/30/65 was redetermined by the Board on August 2, 1966. Our position regarding the various protested items was definitely stated in letters of June 3, 1966, July 15, 1966, August 17, 1966, August 24, 1966, and March 31, 1967. However, you did not concur with the proposal in the March 31, 1967 letter. Thereafter on May 5, 1967, we held a further conference in Sacramento. The principle point of disagreement was our recommendation on the valves, pipes, and fittings in the fuel storage and distribution system installed at REDACTED TEXT as part of a jet-fuel system.

We have reviewed our precedent in this area and have discussed it at some length. As I recall, it was your position that a certain telegram sent by Mr. E. H. Stetson to another contractor constituted precedent for exempting the entire installation. It is our position that the telegram is not an irrevocable ruling inasmuch as it provides in part:

"...fueling system for jet bombers consisting of aluminum piping is machinery and equipment if all other conditions in ruling are present."

It is not clear from the telegram which conditions were discussed with Mr. Stetson. However, we believe condition Number 2, regarding machinery and equipment as set forth in Ruling 12 is not complied with. This condition provides, "It either is not attached to the realty or, if attached, is readily removable as a unit." A review of our precedent indicates that we have allowed process piping, as "machinery and equipment" only if it is above ground and conditions one, three, and four of Ruling 12 have also been complied with.

In our initial recommendation which was made after conferences with Mr. Stetson held on March 18, 1966, at which you were present, it was concluded that we would not exempt the aluminum piping from the bulk storage tank to the so-called day tanks. However, it was concluded that the motors which activate the valves, the filter separators, pumps and other machines and apparatus, the sole function of which is to assist in the function of transporting the fuel from the bulk storage, may be regarded as machinery and equipment.

After discussing this matter with Mr. T. P. Putnam, whom you know has taken over Mr. Stetson's duties, it was concluded that this original recommendation should be our position regarding this installation.

Except as qualified by this recommendation on the fuel storage and distribution system, our recommendation will be as set forth in our previous letters.

Our files indicate that you have requested a Board hearing in this matter. If the Board hearing is still

desired, please advise. If it is not, please sign and return two copies of the enclosed waiver. Our recommendation will be that the claims for refund be denied and that the tax be redetermined as disclosed by the reaudit dated July 7, 1966.

Very truly yours,

Jack D. Paulson
Tax Counsel

JDP:mh [lb]

October 31, 1967

Dear Mr. REDACTED TEXT

In my letter dated April 20, 1967, I suggested a basis for resolving this petition. On April 24, 1967, you indicated disagreement with my recommendation. On May 5, 1967, I stated that the suggested basis set forth in the April 20, 1967 letter was withdrawn.

A review of your letter of April 24, 1967 indicates that you disagree with our position regarding the air conditioning materials which were used for environmental control; the transit pipe used to carry water for the fire system; the hydraulic automotive vehicle lift; and the foam maker.

Although you did not specifically disagree with our recommendation regarding the aluminum pipe fittings and valves installed at REDACTED TEXT and REDACTED TEXT as part of the fuel distribution system for jet aircraft, we wish to state that the recommendation set forth in our letter of April 20, 1967 is no longer our position.

We believe that the exempt portion of the fuel distribution system is limited to the day tanks and piping valves, filters, etc., between the day tanks and fueling hydrants. Our reason for considering these items to be machinery and equipment is the processing nature of their function. This is consistent with our precedent which classifies process piping as machinery and equipment. We do not believe that the lines from the tank farm area to the day tanks are "machinery and equipment" under Ruling 12. We do not believe a supply line is process piping. This conclusion is based upon precedent which has been reviewed and upon conclusions reached after numerous conferences. It is our further position that the telegram to REDACTED TEXT dated November 17, 1964 which provides,

"Under ruling 12, fueling system for jet bombers consisting of aluminum piping is machinery and equipment if all other conditions in ruling are present. Storage tanks are materials and tax applies to the sale of materials to installer."

does not exempt the installation. It is not clear from the telegram which conditions were discussed with Mr. E. H. Stetson. Since all conditions apparently were not discussed, Mr. Stetson no doubt added the qualifying words, "...if all other conditions in ruling are present." We believe condition No. 2 of Ruling 12 is not complied with. This condition requires that the items are either not attached to the realty or, if attached, are readily removable as a unit.

Our recommendation regarding the other items in the determination set forth in our letter of April 20, 1967 remains the same.

It is noted that you requested a Board hearing in this matter. If you no longer desire the Board hearing, please advise within 15 days; otherwise, the matter will be placed on the Board calendar and you will receive official notice on the time and place in due course.

Very truly yours,

Jack D. Paulson
Tax Counsel

November 7, 1967

Dear Mr. REDACTED TEXT

We have reviewed your client's claim for refund of May 2, 1966 in light of information submitted by you. As we understand your position, you claim exemption for certain pipe, valves and fittings installed for REDACTED TEXT.

The drawings and specifications submitted by you are for the REDACTED TEXT facility. One of the items in contention is the new six-inch fuel-oil line which extends from an existing fuel pumphouse south several miles along the shoreline to another pier. The fuel line then extends onto the pier and is installed for the purpose of supplying fuel to marine vessels. It is our understanding that your client also installed plumbing for a salt water flushing system for sewerage disposal and a fresh water and fire water system.

It is our position that this work constitutes an improvement to realty as contemplated by Section 6384 of the Sales and Use Tax Law. It is true that we have exempted process piping as "machinery and equipment" under Ruling 12. However, we do not believe supply lines such as those installed by your client fall into this category. In addition, we are unable to locate any precedent material in our files which support a conclusion that the lines in question are machinery and equipment. Under the circumstances, we are forced to recommend that your client's claim be denied. You will receive notice of the Board's action in due course.

We are sorry that we are unable to agree on this matter. However, we believe the opinion expressed herein is consistent with the conclusion reached at our conference with Mr. T. P. Putnam, Tax Counsel, on November 2, 1967 regarding other taxpayers.

We also believe this conclusion is called for under the provision of Ruling 12. We are returning, under separate cover, your drawings and specifications which you furnished for our consideration.

Very truly yours,

Jack D. Paulson
Tax Counsel

JDP : smk [lb]