



STATE BOARD OF EQUALIZATION

(916) 445-8485

December 7, 1983

Dear _____,

This is in response to your letter of September 13, 1983. We understand that _____ has contracted with the Department of the Army, Corps of Engineers, to perform work on Space Launch Complex 6 and related facilities at Vandenberg Air Force Base, California.

On September 12, 1983, _____ wrote to the Corps of Engineers offering its interpretation as to how the California Sales and Use Tax Law would apply to these items acquired and work performed by _____ in connection with the contract. We will reiterate that interpretation, number 1, 2, and 3, and then render our comments.

1. Sales tax will not be paid on any purchase outside the state of California regardless of whether the item purchased becomes a part of real property or not.
2. Sales tax will be paid on any purchase within California where the purchased item becomes a permanent part of real property.
3. Sales tax will not be paid on any purchase made within the state of California where the purchased item does not become a part of real property. Form SF1094 will be given to the Vendor in lieu of the tax.

Comments:

Prior to discussing the three items listed above, a few general comments are in order. You did not provide us with copies of the contract pursuant to which the work is being done. However, based upon similar questions from other contractors and our review of their work to be performed at Vandenberg, we assume that your contract is one for the improvement of realty. As such it is a "construction contract" as defined in Regulation 1521 (copy enclosed). Since the work is being done for the U.S. Government, _____ is a "United States Construction Contractor" as defined in the regulation and the tax applies as discussed therein [see Regulation 1521 (a)(3) and (b)(1); Rev. and Tax. Code Section 6384].

With respect to Item 1, assuming title to the property in question passes to the U.S. Government out-of-state your statement, that sales tax is not due, is correct. This is true regardless of whether the items in question are classified as tangible personal property, fixtures, materials, or machinery and equipment. Most of the contracts examined so far in connection with the

Vandenberg project have passed title to the U.S. Government out-of-state. Since we have not seen the contract here in question, we cannot state with certainty that its title provisions operate to pass title out of state in this case. However, if you wish to submit the contract for our perusal, we will be happy to render our views with respect to it.

As to Item 2., the types of property referred to in this item are “materials” and “fixtures”. You are correct that sales tax applies with respect to these items upon sale by the vendor to _____ or, if sales tax was not paid upon acquisition, use tax would apply based upon use of the items in performing the contract [Regulation 1521(b)(1)(A)].

Finally, as to Item 3., assuming that title to items such as machinery and equipment or other tangible personal property, which do not become part of the realty, passes to the U.S. Government prior to any use of such items by _____ the sales to _____ will be deemed ex-tax sales for resales and the subsequent “sales” by _____ to the U.S. Government will be exempt sales pursuant to Revenue and Taxation Code Section 6381. Again, since we have not seen the contract in question we cannot state with certainty whether the purchases alluded to in your letter are exempt so, if a definitive opinion is desired, please send us the contract for review.

Very truly yours,

Les Sorenson
Tax Counsel