



STATE BOARD OF EQUALIZATION

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 Executive Director

October 8, 1996

Mr. F. L---
 Chief Financial Officer
 A--- B--- S---
 P.O. Box XX
 XXX --- Avenue South
 --- ---, -- XXXXX

[No Permit Number]
 A--- B--- S---
 Modular Commercial Buildings
 Local Sales Tax
 Place of Sale

Dear Mr. L---:

I am answering your letter to me dated August 22, 1996, following up on mine to you dated August 15, 1996. You asked for clarification on a few specific issues. For ease of discussion, we will assume, unless stated otherwise, that the items will be used on a construction project as defined in Regulation 1521. We discussed the classification of property as materials or fixtures and the general application of tax to their sales in our previous letter, so, for the sake of brevity, will not repeat it here.

1. Bulk Purchases of Standard Construction Materials/Fixtures.

You state that ABS purchases its construction materials and fixtures in bulk for delivery to and storage at its assembly facility prior to being identified to specific projects. You ask how ABS may purchase these items tax exempt and then self-assess the applicable tax at the time the items are dedicated to a particular project.

ABS will be purchasing materials tax-paid for consumption. If ABS buys the materials from an in-state vendor, the sale is subject to sales tax at the time of purchase. The supplier must pay sales tax at that time. (§ 6051.) If ABS gets the materials from an out-of-state supplier who is engaged in business in California under Section 6203, the supplier must collect use tax from ABS at the time of purchase and report it to the Board. ABS may not self-report the use tax under these circumstances. (§ 6201.)

With regard to fixtures, ABS, as the retailer, may purchase them free of tax for resale (whether in-state or out-of-state) by issuing its suppliers resale certificates conforming to the

requirements of Regulation 1668 at the time of purchase. It would then pay sales tax in the quarter in which the fixtures were installed. (Reg. 1521(b)(2)(B)1.)

2. Purchase of Materials/Fixtures from an Out-of-State Vendor Not Engaged in Business in California.

An out-of-state materials supplier not engaged in business in California is not required to collect use tax. (§ 6201.) ABS would have to self-report the use tax in the quarter in which the materials were installed. (Reg. 1685.)

3. Time and Materials Contracts.

You ask if, in the case of time and materials contracts, the place of sale would be the sales office of ABS rather than the jobsite. Under such contracts, the place of sale of fixtures and the place of use of materials that were not purchased tax-paid is the jobsite, no matter what the nature of the contract. (Reg. 1806(b).)

For your information, I have included a copy of Regulation 1685. I hope the above discussion answered your questions. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Senior Staff Counsel

JLW:sr

cc: Mr. Larry Micheli (MIC:27)