

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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April 23, 1991

Mr. D--- A. T---, EA
Vice President, Tax Services
T--- M--- G---
XXXX --- Court
--- ---, CA XXXXX-XXXX

Re: Sale of Central Cooling Plant,
A--- P---, --- ---

Dear Mr.T---:

This is in response to your letter of April 19, 1991.

On behalf of your clients, S--- D--- T--- A--- (hereinafter "Seller") and the S--- D--- C--- C--- Company (hereinafter "Buyer"), you have requested our opinion as to the application of the sales tax to the sale in place of a complete central cooling and ice storage facility.

We understand that on November 9, 1989 S--- D--- T--- A--- was formed as a limited partnership of S--- L--- Corporation and G--- A--- B--- to develop and construct the A--- P--- project. This project is to consist of a 34-story, 660,000 square foot, office tower, a four-level underground parking facility, a 13-story, 297 room Guest Quarters Suite Hotel, retail space, and a trolley station terminal. Collectively this project is named A--- P--- (hereinafter "The Project").

Within the underground parking structure, which is the foundation for the buildings of The Project, a central cooling facility, is being constructed which will provide chilled water for air conditioning purposes. The ice storage will provide a significant savings to the end users or consumers by avoiding the costly on-peak rates during the day to provide air conditioning throughout the project.

The major components of the facility are six (eight?) cylindrical tanks stacked three high through the four levels of the underground parking structure of The Project. These tanks house expandable plastic water bottles which react to cooling chemicals to convert 123,500 gallons of water into 515 tons of ice on a daily basis. Water is converted to ice each night by using low cost off-peak electricity. In the day time, when traditional air conditioning systems must use more expensive power, a cooling solution will circulate through the ice, become chilled, and provide cool

air for distribution through the system. This ice product provides cool liquid for air conditioning of The Project through the integrated building distribution system.

In addition to the tanks, the garage will house cooling equipment, various pumps, valves, distribution piping, and refrigeration equipment required to circulate, generate, and distribute the chilled coolant throughout The Project. These components will be located throughout the underground parking structure.

A majority of the facility's output will be utilized by The Project through the integrated building distribution system. However, if this sale is to occur between Buyer and Seller, all excess tons of water generated will pass through rerouted pipes located under downtown --- City streets to another central chiller facility for distribution to its various customers in the --- --- --- Redevelopment District, i.e., R---'s, M---'s, O--- H---.

The construction costs for erecting and installing the central cooling facility with The Project are not detailed on a separate turnkey or time and material contract. The Project construction manager is S--- S---, Inc., with M. H. G--- as the general contractor for the buildings and underground parking structures. S--- D--- T--- A--- is constructing and installing the facility on their own behalf. In conforming with the Sales and Use Tax Law, S--- D--- T--- A--- paid all applicable sales and use taxes on all components and materials in the construction of the facility.

On approximately December 1, 1991 considering startup testing and operation is achieved (In-Service Date of Facility is estimated at November 1, 1991), The Seller, a Limited Partnership under the laws of the State of California, Tax I.D. #XX-XXXXXXX, will sell its interest in the central cooling facility with all power sales agreements and rights to the Buyer, a corporation under the laws of the State of California. It is Seller's opinion that Buyer is more qualified to maintain and operate facility, since they presently own and operate an existing cooling facility nearby. Both Buyer and Seller do not presently have in their possession a sales tax permit or resale identification numbers, as they are not sellers of tangible personal property.

Under our Regulation 1596, "Buildings and Other Property Affixed to Realty," paragraph (a):

Any sale of buildings or minerals or the like affixed to land is taxable as a sale of personal property if, pursuant to the contract or agreement of the sale, the buildings or minerals or the like are to be severed by the seller thereof. If, pursuant to the contract or agreement of sale, such buildings or minerals or the like are to be severed by the purchase thereof, such a transfer is not taxable as a sale of personal property.

Here there is no contemplation that Seller or Buyer will remove the facility, or any portion of the facility, from the realty. Accordingly, it is our opinion that the transaction in question is subject to neither sales tax nor use tax. The only tax due was the tax paid at the time of construction.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

GJJ:sr

cc: Mr. D--- Q---
S--- D--- C--- C--- Company
XXX Northeast ---, Suite XXX
---, OR XXXXX-XXXX

Mr. E--- B---
O--- P--- R---
XXX West ---, Suite XXXX
--- ---, CA XXXXX