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January 16, 1986

Mr. S--- J---  
P--- & J--- C---  
Construction, Inc.  
XXXX --- Hwy.  
---, Oregon XXXXX

Dear Mr. J---:

This is in response to your letter of January 6, 1986. We understand that P--- & J--- Construction Inc. (P&J) an Oregon based contractor, has entered into a contract (Cal 97-7/9) with the R--- V--- I--- H--- A--- (RVIHA) to construct 30 homes and related improvements to realty on the C--- in northern California.

Below are questions from your letter followed by our responses to those questions.

Question No. 1

“What steps should be taken by P&J in order to obtain a Resale Number for this Project?”

Response

As will be discussed below, we are of the view that P&J is the seller and retailer of “materials” to be furnished and installed in performing Cal 97-7/9. Under California law, sellers are required to apply for sellers permits (Rev. & Tax. Code §6066). We assume the sellers permit number is what you refer to as a “Resale Number”. We suggest that you contact the [BOE] Branch Office in order to apply for the permit. Once a sellers permit is obtained, P&J may then issue resale certificates to its suppliers of materials in accordance with our Regulation 1668, copy enclosed.

Question No. 2

“Once a Resale Number is obtained, is the Contract worded in such a manner that the fixtures and materials are not subject to the State Sales Tax?”

Response

Regulation 1521(b)(2)(A)2 provides in pertinent part:

“When Contractor is Seller. A construction contractor may contract to sell materials and also to install the materials sold. If the contract explicitly provides for the transfer of title to the materials prior to the time the materials are installed, and separately states the sale price of the materials, exclusive of the charge for installation, the contractor will be deemed to be the retailer of the materials.”

Our view of the contract indicates the following title passage provision: “Title to all materials to be used in this project which are delivered to and properly stored on the job site and the subject of a partial payment shall transfer to owner prior to the time the materials are installed by the Contractor or any subcontractor”. Additionally, the contract provides: “The [RV]IHA shall pay the Contractor for performance of the contract, subject to additions or deductions as provided in the Contract the sum of One million seven hundred ninety-eight thousand and no/100 Dollars (\$1,798,000.00). The total sales price of all materials used in this project is Five hundred eighty-four thousand nine hundred seventy-one Dollars (\$584,971.00), exclusive of the charge for installation”.

The above cited passage clause plus the language separately stating the sales price of the materials is sufficient to qualify P&J as the seller and retailer of materials to RVIHA pursuant to Regulation 1521. Since sales to RVIHA on the reservation are exempt from tax, sales tax otherwise normally due does not apply (See Rev. & Tax. Code §6352; Reg. 1616, copy enclosed).

We note, with respect to “fixtures” that P&J is the seller and retailer of such “fixtures” to RVIHA (see Reg. 1521(b)(2)(B), copy enclosed). As in the case of the “materials” discussed above, P&J’s purchases of fixtures may be purchased ex-tax by issuing resale certificates to suppliers; and, sales of the “fixtures” by P&J to RVIHA are, similarly, exempt.

Question No. 3

“What steps do subcontractors to P&J and other suppliers and lower tier subcontractors need to take in order to obtain a Resale Number for this project?”

Response

All contractors and subcontractors who will be furnishing and installing improvements to realty for RVIHA and who have entered into contracts containing the title passage clause and pricing language discussed above may apply for sellers permits in the same manner as P&J.

Question No. 4

“Once a Resale Number is obtained by a subcontractor/Supplier, is the proposed Subcontract structured in such a manner that the State Sales Tax is not applicable?”

Response

In our conversation of January 15, 1986, you indicated the subcontract language pertaining to the title passage clause as well as language pertaining to pricing would be conformed to the language utilized in Cal 97-7/9 discussed above. Assuming such conformity is achieved, our conclusion is as indicated with respect to Cal 97-7/9.

Sincerely,

E. Leslie Sorensen, Jr.  
Tax Counsel

ELS:rar

Enclosures