



STATE BOARD OF EQUALIZATION

August 7, 1953

A--- P--- and C--- Co.
P.O. Box XXXX T--- A---
--- --- XX, California

Attention: Mr. D--- E. M---
Assistant Secretary-Treasurer

Your letters of July 3
And August 3
Account No. - XXXXX

Gentlemen:

We understand that the E--- B--- E--- Co. is to furnish you with rock fill material on the basis of a unit price per ton, the material to be dumped at locations designated by you at your --- plant. All spreading, leveling, and rolling of the fill will be done by yourself after delivery by the vendor. You inquire as to the taxability of this transaction.

Under the above facts we would regard your supplier as a retailer of the fill. The tax, therefore, would apply to the full selling price of this product. In other words, each day there would be a taxable sale made to you of the fill delivered for 40¢ per ton price.

It is true that we generally regard a construction contractor as a consumer of "materials", as defined in Sales and Use Tax Ruling 11 (copy enclosed), used in fulfilling construction contracts and therefore not as a retailer thereof. However, for your supplier to be regarded as a consumer of the fill under a construction contract rather than as a retailer thereof, he would have to not only supply the fill but actually do all of the spreading, leveling, and rolling, that is, he would actually have to improve the real property. However, in the situation outlined by you, the supplier is merely a retailer furnishing the fill which will be used by you.

Very truly yours,

W. W. Mangels
Assistant Counsel

WWM:ja

cc: Oakland – Auditing
Los Angeles - Auditing