

**STATE BOARD OF EQUALIZATION**

(916) 445-5550

August 9, 1989

Mr. J--- Z---
Consultant

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XX --- --- ---, Suite XXX

--- ---, UT XXXXX

Re: Application of sales or use tax to the installation and
sale of "clean rooms"

Dear Mr. Z---:

This is in response to your letter dated June 30, 1989 regarding the application of sales or use tax to your client's installation and sale of clean rooms in this state. Your client is based in Utah, and generally purchases inventory tax free and fabricates the major parts of the clean room at its Utah plant. Your client then ships or delivers the parts to the job site, assembling and installing the unit at the designated building location. If your client makes successful bids for installation of clean rooms in this state, its activity will include the following:

- "1. Delivery by common carrier from Utah to the job location of prefabricated (fabrication done in Utah) clean room material which will be assembled and installed by the client's employees in your state.
- "2. Some material will be purchased from local California vendors for;
 - a. incorporation into the job,
 - b. use or consumption by client's employees (e.g., office supplies, small tools, etc.),
 - c. use in attaching the unit to the realty.
- "3. The sale of the completed unit may be to a general contractor who will most likely include it as part of their total bid to their customer. The general contractor may or may not show the clean room 'sales price' as a separate line item on their billing to the customer/owner, or

- “4. The sale of the completed unit may be made directly to the customer (owner of the facility). The bid may be quoted on a lump sum basis or the charge to install may be noted separate.”

A person engaged in the business of selling tangible personal property is a “seller.” (Rev. & Tax. Code § 6014.) A “retail sale” is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax Code § 6007.) A “retailer” is a seller who makes any retail sale of tangible personal property. (Rev. & Tax Code § 6015). Your client makes retail sales of tangible personal property and is therefore a retailer.

Based upon our telephone conversation, my understanding is that your client will probably enter into one contract for the installation of a clean room in California this year, and will contract further installations beginning next year. Each installation takes two to three months. Under these facts, we conclude that your client is a retailer engaged in business in this state. (See Rev. & Tax Code § 6203.)

Generally, a retailer’s retail sale of tangible personal property in this state is subject to sales tax. (Rev. & Tax Code § 6051. See also Reg. 1620.) Although liability for the sales tax is imposed upon the retailer, the retailer may collect sales tax reimbursement from the purchaser if pursuant to their contract of sale. (Civ. Code § 1656.1.)

When sales tax does not apply, use tax applies to the use of property in this state when the property was purchased from a retailer for use in this state. (Rev. & Tax. Code §§ 6201, 6401.) Although the use tax is imposed on the user, a retailer engaged in business in this state is required to collect the tax from the purchaser and pay it to the state. (Rev. & Tax. Code § 6202, 6203.) The amount of such tax required to be collected is a debt owed by the retailer to this state. (Rev. & Tax. Code § 6204.) A person who has purchased property for use in this state and who has not paid use tax to his or her vendor must self-report his or her use tax liability. (See Rev. & Tax. Code § 6202.)

Since your client will attach the clean rooms to real property, your client is a construction contractor. Regulation 1521 describes the application of sales and use tax to construction contractors and their construction contracts, and a copy is enclosed for your information. A construction contractor is the consumer of materials furnished and installed in the performance of a construction contract, and either sale tax or use tax applies with respect to the sale of the materials to or the use of the materials by the construction contractor. (Reg. 1521(b)(2)(A)1.) On the other hand, a construction contractor is the retailer of fixtures furnished and installed in the performance of construction contracts and tax applies to the construction contractor’s sale of the fixtures. (Reg. 1521(b)(2)(B)1.) Materials and fixtures are defined in Regulation 1521(a). (See also appendices A and B.)

We have previously concluded that certain clean rooms were composed entirely of materials while others were regarded as a single fixture. (Business Taxes Law Guide Annotations 565.0340 (11/12/65), 565.0400 (4/24/53).) My understanding is that your client assembles a modular clean room and then attaches it to real property. If this is the case, the entire clean room would be

regarded as a fixture. If, on the other hand, the clean room were assembled from the real property out (i.e., the first piece attached to real property and the next piece attached to the first, etc.), we would regard the room as composed of materials except for any items of the type listed as fixtures in Regulation 1521.

Your questions are quoted below, followed by our responses.

- “1. Since clean rooms are usually considered tangible personal property, used as part of an integrated manufacturing process, would the sale of such rooms be exempt from your sales or use tax?”

California does not have an exemption from sales or use tax for property that will be used to manufacture other tangible personal property. Thus, the sale or use of property otherwise subject to sales or use tax remains subject to that tax even if the property will be used to manufacture other tangible personal property.

- “2. If or when the sale of clean rooms are subject to California sales or use tax what rate applies? Are any local taxes applicable?”

The minimum sales or use tax rate in California is 6%. Some districts (comprised of one or more counties) impose an additional ½% or combined 1% transactions and sue tax. Thus, the total sales or use tax rate is 6%, 6 ½%, or 4%, depending upon the district (county) in which the property is sold or used. Enclosed is a pamphlet entitled, “Tax Tips for Transit Taxes.” This pamphlet discusses the general rules applicable to the additional ½ or 1% transactions and use tax and lists the districts (counties) in which they apply.

- “3. Should our client purchase supplies that become a component part of the clean room tax free when obtained from California vendors (nuts, bolts, screws, filters, etc.)?”
- “4. Is installation or job site assembly labor subject to tax if separately stated on the sales invoice?”
- “5. If installation or assembly labor is non-taxable, is our client responsible for tax on cost of parts and supplies used in connection with such labor?”

When your client purchases materials for attachment to real property, such as nuts, bolts, and screws, from California vendors for use in a construction contract, it should not purchase those materials tax free by issuing the vendor’s resale certificate. (See Reg. 1668, a copy of which is enclosed.) It is a consumer of those materials and sales tax applies to the sale to your client or use tax applies to your client’s use. Since your client would be reselling fixtures it installs in the performance of construction contracts, it may purchase those fixtures and items incorporated into those fixtures tax free by issuing resale certificates. (See Regs. 1525(b), 1668.) Sales tax would apply to its sale of those fixtures as described in subdivision (b)(2)(B) of Regulation 1521.

There is no sales or use tax on a construction contractor's charges for installation labor. (Reg. 1521. See Rev. & Tax. Code §§ 6011(c)(3), 6012(c)(3).) Charges for assembly labor to fabricate tangible personal property (such as fixtures) would be included in the measure of sales or use tax. (Rev. & Tax. Code §§ 6006(b), 6011, 6012, 6051, 6201, Reg. 1521(b)(2)(B)2.)

“6. Should our client pay California sales or use tax on consumable items such as office supplies, tools, etc. purchased for use within your state?”

Yes, the sale at retail of tangible personal property by a retailer in this state is subject to sales tax. If that tangible personal property is purchased outside this state for use in this state, the use in this state is subject to use tax.

“7. Is assembly equipment purchased and used by our client in your state subject to sales or use tax? Or would it be exempt under your manufacturer's exemption?”

“If assembly equipment is purchased and first used in Utah, would California tax apply upon subsequent use in your state?”

As discussed above, there is no manufacturer's exemption from sales tax in California. Therefore, assembly equipment purchased at retail in this state is subject to sales tax. With respect to assembly equipment purchased outside this state and first used outside this state, use tax would apply to its use in this state if it were purchased for use in California. This is explained in Regulation 1620. Generally, if property first used outside this state is brought into California within 90 days after its purchase, it is presumed that the property was purchased for use in California and its use is subject to use tax. (Reg. 1620(b)(3).)

“8. If a clean room sale is to a California college, university, or research foundation, would such sale be exempt?”

“What type verification of exemption must our client obtain from the customer?”

No, there is no exemption from California sales or use tax for a sale to a college, university, or research foundation.

“9. If a sale is made by our client to a general contractor that is ‘reselling’ the clean room as part of a general contract to the owner, would or should the contractor issue our client a resale exemption certificate?”

“If the owner of the facility is a manufacturer or some other exempt entity (e.g. church, government, etc) can or should the general contractor give our client some other type proof of exemption?”

As discussed above, the construction contractor is always regarded as the consumer of materials furnished and installed in the performance of construction contracts, and the contractor may not take resale certificates for such materials. Generally, title to materials and fixtures installed by a construction contractor under a subcontract with the general contractor passes directly to the owner of the real estate. That is, the subcontractor is actually selling fixtures to the owner, and that sale is at retail. The contractor cannot avoid sales or use tax liability by taking resale certificates from the general contractor. (Reg. 1521(b)(6)(A).)

“10. Does California have any rules, regulations, or written administrative policy regarding the proper handling of clean rooms for sales and use tax purposes?”

As discussed above, enclosed for your information are copies of Regulations 1521, 1620, and 1668, and a pamphlet on transit taxes. If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Tax Counsel

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Enclosures