



STATE BOARD OF EQUALIZATION
916-445-5550

November 14, 1991

Ms. [W]
Deputy County Counsel
XXX --- ---
--- ---, -- XXXXXX

Re: [M]
S- -- XX-XXXXXX

Dear Ms. [W]:

This is in response to your letter dated October 9, 1991. You ask whether the exemption provided by Revenue and Taxation Code section 6376.1 from the increase in tax rates that became effective July 15, 1991 applies to certain contracts.

Section 6376.1 applies to contracts: 1) entered into prior to July 15, 1991; 2) for a fixed price; when 3) no party to the contract has the right to terminate it upon notice, whether or not the right is exercised.

The contracts at issue start with the county's issuance of a quotation request which is completed by potential sellers to constitute their offer. The county then accepts an offer by the issuance of a purchase order. You have included an example of each document. The example quotation request lists the specification for the purchase of four dump trucks. The seller's offer was due November 9, 1990. In the quotation request completed by [M]], the potential seller listed a sales price of \$242,000.68 and sales tax of \$15,125.04. The county issued a purchase order to [M] dated November 11, 1990 which showed a subtotal of \$246,962.88 plus sales tax of \$15,435.18 for a total of \$262,398.06 (this amount included two options listed by [M] in its offer that had not been included in the total in that offer).

You cite Uniform Commercial Code section 2204 for the proposition that a contract may be found to exist even though the exact moment of its making is undetermined. You believe this is relevant to establish that your contract was entered into prior to July 15, 1991. We believe this provision is not relevant since there appears to be no doubt when your contract was formed. [M] made an offer to the county for the sale of certain dump trucks. The county accepted that offer with its purchase order dated November 28, 1990. Therefore, even though the property was

delivered pursuant to that contract after July 15, 1991, the contract nevertheless satisfies this part of the condition for exemption under section 6376.1.

We agree that the contract is for a fixed price. The contract as represented in the acceptance of the county, that is, the purchase order, lists the total sales price plus the sales tax reimbursement the county agreed to pay to [M]. From the documents we have reviewed, we see no provision that either party can terminate the contract upon notice. Assuming there is no such provision, we conclude that all three conditions of the exemption exist and that the sale of these dump trucks is exempt from the tax increases which became effective on July 15, 1991.

If you have further questions feel free to write again.

Sincerely,

David H. Levine
Senior Tax Counsel

DHL:cl