



STATE BOARD OF EQUALIZATION

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Fourth District, Los Angeles

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Controller, Sacramento

September 11, 1992

Burton W. Oliver
Executive Director

Dear ---:

Your letter dated July 30, 1992 to Mr. Bob Nunes has been referred to me for response. With your letter, you enclosed copies of letters from --- and --- ---, Supervising Tax Auditor with the Board of Equalization. You asked several questions regarding exemptions from tax increases.

--- letter was in response to an earlier request by --- regarding the acceptance of certain exemption certificates to exempt --- contracts from the Orange County Local Transportation Authority (OCTA) Tax. --- provided information regarding the exemption for certain contracts entered into prior to the state tax increase of 1-1/4% on July 15, 1991, and certain contracts entered into prior to the 1/2% tax increase for Los Angeles County (LATC) and (OCTA) on April 1, 1991. In conclusion, --- explained that all sales of supplies after April 1, 1991 to --- in which there is no fixed price contract between --- and ---, are subject to the OCTA Tax. After receiving a copy of the Board's response, --- sent you a letter that explained the application of tax to your transaction as well as a copy of ---'s letter

In your July 30, 1992 letter, you explained that the specific exemption you are claiming relates to the OCTA and LATC taxes and to fixed price construction contracts entered into before April 1, 1991.

As a preliminary matter, the three tax increases that you identified in your letter, namely: 1) the 1/4 % state tax increase (earthquake tax), 2) the 1/2% OCTA and LATC tax increases, and 3) the 1-1/4% state tax increase, are each covered by a specific and separate "grandfather clause" which exempts certain transactions entered into prior to the operative dates from the tax increase. Each of

these laws stands alone, and each is slightly different as it relates to fixed price construction contracts.

At this point, I believe it would be helpful to clarify the “grandfather clause” for each of the three tax increases as they relate to fixed price construction contracts.

1/4% Earthquake Tax

The “grandfather clause” covering the tax rate increase for the 1/4% (earthquake tax) exempts from that increase fixtures, materials, and supplies obligated pursuant to a fixed price construction contract entered into prior to November 7, 1989.

Transactions Taxes in General (OCTA, LATC, etc.)

The “grandfather clause” covering the tax rate increase for OCTA, LATC as well as all other district taxes exempts from that increase fixed price contracts. This includes fixtures obligated pursuant to a fixed price construction contract entered into prior to the effective date of the increase because construction contractors are retailers of fixtures. The “grandfather clause” relating to this tax increase does not provide an exemption from the increase for materials and supplies purchased pursuant to a fixed price construction contract entered into prior to the effective date of the increase, unless the contractor has entered a fixed price contract directly with their supplier for these materials and supplies prior to the effective date of the tax increase.

1 1/4% State Tax Increase

The “grandfather clause” covering the tax rate increase for the 1-1/4% state tax increase exempts from that increase materials, and fixtures obligated pursuant to a fixed price construction contract entered into prior to July 15, 1991. The “grandfather clause” relating to this tax increase does not provide an exemption from the increase for supplies purchased pursuant to a fixed price construction contract entered into prior to the effective date of the increase, unless the contractor has entered a fixed price contract directly with their supplier for these supplies prior to the effective date of the tax increase.

Accordingly, even though you may have entered into a fixed price construction contract with your customers prior to the operative date of the 1/2% district tax increase for OCTA and LATC, your purchase of supplies for the job will be subject to tax unless you have a fixed price contract directly with your supplier for these supplies prior to the effective date of the tax increase.

I hope this information is helpful.

Sincerely,

Glenn A. Bystrom
Principal Tax Auditor

GAB:sls
B-A959

Enclosures: Section 6376.1 and Regulation 1823

bc: Mr. Robert Nunes (with copy of incoming)
Mr. Richard Rinetti (with copy of incoming)
Orange County District Compliance – Unable to locate a permit for this taxpayer.
Mr. Gary Jugum
Ms. Shirley Johnson
District Administrators

M e m o r a n d u m**190.6300**

To: Mr. Glenn Bystrom

Date: May 20, 1996

From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed your memorandum of September 11, 1992 to --- ---.

We are in agreement with his conclusion, as follows:

Tax Rate Changes. Several questions were asked regarding the grandfather exemption from tax increases related to three different tax increases. The three tax increases identified are: (1) the ¼% tax increase (earthquake tax), (2) the ½% OCTA and LATC increases, and (3) the 1 ¼% state tax increase effective July 15, 1991. Each of these tax increases are covered by a specific and separate "grandfather clause" which exempts certain transactions entered into prior to the operative dates from the tax increase. Each of these laws stand alone, and each is slightly different as it relates to fixed price construction contract. A clarification of the "grandfather clause" for each of three tax increases as they relate to fixed price construction contract follows:

¼% Earthquake Tax

The "grandfather clause" covering the tax rate increase for the ¼% (earthquake tax) exempts from that increase fixtures, materials and supplies obligated pursuant to a fixed price construction contract entered into prior to November 7, 1989.

Transactions Taxes in General (1/2% OCTA, LATC, etc.)

The "grandfather clause" covering the tax rate increase for OCTA, LATC, as well as other district taxes, exempt from that increase fixed prices contracts. This includes fixtures obligated pursuant to a fixed price construction contract entered into prior to the effective dates of the increase because construction contractors are retailers of fixtures. The "grandfather clause" relating to the tax increase does not provide an exemption from the increase for materials and supplies purchased pursuant to a fixed price construction contract entered into prior to the effective date of the increase, unless the contractor has entered inot a fixed price contract directly with its supplier for these materials and supplies prior to the effective date of the tax increase.

1 ¼% State Tax Increase

The "grandfather clause" covering the tax rate increase for the 1 ¼% state tax increase exempt from that increase materials and fixtures obligated pursuant to a fixed price construction contract entered into prior to July 15, 1991. The grandfather clause" relating to this tax increase does not

provide an exemption from the increase for supplies purchased pursuant to a fixe price construction contract entered into prior to the effective date of the increase, unless the contractor has entered a fixed price contract directly with its supplier for these supplies prior to the effective date of the ½% district tax increase for OCTA and LATC, purchase of supplies for the job will be subject to tax unelss a fixed price contract directly with suppliers has been entered into prior to the effective date of the tax increase. 9/11/92