STATE OF CALIFORNIA

330.2311.250

STATE BOARD OF EQUALIZATION
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October 24, 1996

Mr. D. D--- W---
Y--- E--- S--- Company
XXXX --- ---
--- ---, UT XXXXX

Re: Y--- E--- S--- Company
S- -- XX-XXXXXX

Dear Mr. W---:

This is in response to your letter of July 16, 1996, in which you inquire of the application of tax to your sales, leases, maintenance and repair of outdoor signs as well as sale of advertising space on billboards. You state:

> "We are a manufacturer of electric signs and related products. Signs are sold and installed by us in various California locations. Some of the signs are leased to customers. We also [sell] maintenance contracts and do service repair work on customer owned signs."

You provided descriptions of various transactions and your understanding of how tax would apply to those transactions. We shall consider each transaction in order for purposes of clarity.

Revenue and Taxation Code section 6051 imposes a sales tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. When sales tax does not apply, use tax applies to the use in California of tangible personal property purchased from a retailer for use in California. (Rev. & Tax. Code §§ 6201, 6401.) Neither the sales nor the use tax applies to charges for services not constituting sales of tangible personal property, unless they are part of the sale of tangible personal property. (Sales and Use Tax Reg. 1501, Rev. & Tax. Code § 6012(b)(1).)

> "Signs are sold and installed for cash or on short term conditional sale contracts. Some of these signs (which we consider to be personal property or a fixture attached to [realty]) are installed on buildings and some are freestanding pylon or monument type signs and **are not** attached to buildings or structures. We

understand sales tax applies to the cash sales price of the sign **LESS** the billing amount for installation labor when it is attached to a building. We understand that sales tax applies to the cost of our materials when the sign is not attached to a building." (Emphasis in original.)

A "construction contract" means and includes a contract to erect, construct, alter, or repair any building or other structure, development, project, or other improvement on or to real property. (Sales and Use Tax. Reg. 1521(a)(1)(A)1.) A "construction contractor" is a person who performs a construction contract. (Reg. 1521(a)(2).) You are performing a construction contract when you furnish and install property becoming an improvement to real property. A construction contractor is generally a consumer of materials the contractor furnishes and installs pursuant to the construction contract and tax applies to the sales of those materials to, or to their use by, the contractor. (Reg. 1521(B)(2)(A)1.) Contractors are retailers of fixtures they furnish and install in the performance of construction contracts and tax applies to the sales of those fixtures by the contractor. (Reg. 1521(b)(2)(B)1.)

"Materials" include construction materials and components which are incorporated into, attached to, or affixed to real property by contractors, which when combined with other tangible personal property, lose their identity to become an integral part of the real property, e.g., bricks, cement, and electrical wiring and connections. (Sales and Use Tax Reg. 1521(a)(4).)

"Fixtures" are items which are accessory to a building which do not lose their identity when installed. (Sales and Use Tax Reg. 1521(a)(5).) Signs are specifically included in the list of typical items regarded as fixtures in Appendix B of the regulation. However, a sign which is firmly attached to realty, itself becoming an improvement to real property and not attached to a building, is not a fixture but is a structure in and of itself. (See, e.g., Bus. Taxes L. Guide Annot. 330.2308, 7/2/93.)

We assume that the "monument signs" you build are firmly attached to the ground, and thereby become an improvement to real property. When you build such a sign you are performing a construction contract and you are the consumer of materials you furnish and install as part of the construction. Sales or use tax applies with respect to the sale of those materials to you or to your use of them. You are the retailer of any fixtures you furnish and install onto the sign (e.g., light fixtures). You owe sales tax on your gross receipts from such sale in accordance with Sales and Use Tax Regulation 1521(b)(2)(B).

As noted above, signs attached to buildings are themselves regarded as fixtures. You are the retailer of such signs. We understand that your contract states the sale price of the sign; therefore, tax applies to that price. (Reg. 1521(b)(2)(B)2.a.) Charges for labor to actually install the sign onto the real property are not taxable.

> "We understand we are liable for use tax on the cost of our materials used to maintain signs on maintenance contracts that are not mandatory. There is no sales tax applicable to the billing amount for maintenance contracts."

A contract to repair a sign which is a fixture in place or one that you are required to reinstall to the building is a construction contract. (Sales and Use Tax Reg. 1521(c)(6).) If you bill lump sum you are the consumer of the materials that you use to repair the sign. If so, you are correct that you are liable for tax on cost and not on your charges for the maintenance contract. If, however, you separately state the price of the parts from that of the labor, you are the retailer of the parts and tax applies to your selling price.

> "When we repair customer signs, not on a maintenance contract, we charge sales tax on the retail price of the materials used and not on labor."

As discussed above, you are performing a construction contract when you repair signs attached to buildings (fixtures) if the signs are repaired in place or if they are required to be reaffixed to the building after repair. Since you charge "sales tax," we assume you separately state the charge for the parts. As such, you are the retailer of the parts and owe sales tax on the selling price. (Sales and Use Tax Reg. 1521(c)(6)(B)1. and 2.)

> "We understand we have the option to charge tax on the lease installments as they are billed **OR** to pay, at the beginning of the lease, the sales tax on the cash price less installation labor, just as though it was a sale. In the case of a freestanding leased sign, the option would be to pay sales tax on our material cost at the beginning of the lease. Our leases are 'operating' or 'true' leases. They **are not** conditional sales or secured transactions." (Emphasis in original.)

Leases of tangible personal property in California are continuing sales and purchases subject to use tax measured by rentals payable unless the lessor has timely paid sales tax reimbursement or use tax measured by the purchase price and leases the property in substantially the same form as acquired. (Rev. & Tax. Code §§ 6006(g)(5), 6006.1, 6010(e)(5), 6010.1, Sales and Use Tax Reg. 1660.) When a lease is a continuing sale, the lessee owes use tax measured by the rentals payable. (Sales and Use Tax Reg. 1660.) The lessor must collect that tax from the lessee and remit it to the state, and must give a receipt to the lessee showing the amount of tax collected. (Sales and Use Tax Reg. 1686.)

We understand you are the manufacturer of the signs which you lease; therefore, you will not be leasing the property in substantially the same form as acquired. We understand you have the right to remove the signs which are fixtures (i.e., that are attached to buildings) upon breach or termination of the lease and you are not the lessor of the realty. In that case, such leased signs are "tangible personal property." (Rev. & Tax. Code § 6016.3.) Thus, since you are leasing tangible personal property but not in substantially the same form as acquired, you may not elect to pay sales tax or use tax measured by the purchase price of the sign. Rather, your leases of

such signs are continuing sales, and you must collect tax from the lessee measured by the rental payments and remit that tax to the Board.

On the other hand, the lease of a sign which is firmly attached to realty, such as a pole sign embedded in concrete in the ground, is treated as a lease of real property. Tax applies to the contract to construct the structure (sign and pole) in accordance with Regulation 1521 as above described. That is, tax would apply to your cost of the property incorporated into the sign. (Bus. Taxes L. Guide Annot. 330.2308, 7/2/93.) There would be no tax applied to the rental receipts since this is the rental of real property.

> "We understand that receipts for advertising space on billboards are not subject to sales tax. We are responsible for use tax on the cost of materials to construct and maintain the billboards."

Your above-stated understandings are correct.

If you have any further questions in regard to the matters contained herein, please do not hesitate to write again.

Yours very truly,

Anthony I. Picciano
Tax Counsel

AIP:cl

cc: Out-of-State District Administrator