



STATE BOARD OF EQUALIZATION

February 21, 1955

J--- P--- – M--- Corporation
XXXX --- ---
--- X, California

Attention: Mr. G. I. L---
Controller

SC-C-XXXXXXX

Gentlemen:

We have received a report from our --- District Office relative to the transaction discussed in your letter of January 17.

It appears that the transaction in question consists of the placing of reinforcing steel and pouring of cement to form precast steel concrete pilings to be emplaced by B--- C. G---, Inc. We are informed that you had no responsibility for, and performed none of, the pile driving or any of the installation of any of the material. As we understand it, you did not improve real property but merely fabricated tangible personal property with which your customer, B--- C. G---, Inc., subsequently improved real property.

In order to be a consumer under the provisions of Ruling 11 a person must be either a contractor or a subcontractor performing a "construction contract". A construction contract is defined as a contract for erecting, remodeling, or repairing a building or other structures on land. From your letter and the report of our District Office you did not improve real property but merely fabricated personal property which your customer used in improving real property. There was, therefore, a sale of tangible personal property from you to your customer and this was a retail sale because your customer used it to improve real property and hence was the consumer. The transaction was not the less a sale by you, even though G--- furnished some of the materials, because under the express provisions of Section 6006(b) of the Sales and Use Tax Law the producing, fabrication, or processing of tangible personal property furnished directly or indirectly by the consumer is a sale.

Apparently you object to what we believe is clearly the law on the subject upon the basis that a contractor with facilities to fabricate materials to be used by him enjoys a tax advantage over a contractor without such facilities who must, therefore, either buy the fabricated article or have someone else fabricate it for him. This is a question of economics and runs throughout the entire administration of the Sales Tax Law. It frequently happens that through integration of business a lesser tax liability results than where there is a succession or transfers between separate entities. Any change in the law to prevent such a result would, of course, require legislation. We point out, however, that the law has been consistently applied in the manner set forth herein with respect to sales to construction contractors by material men and fabricators, whether the property involved be structural steel fabricated by other than the contractor, lumber, and other building materials of any sort.

We note that you have sent a copy of your letter to the office of the Attorney General and we are likewise sending to that office a copy of this letter.

In the event you are desirous of discussing these problems with the undersigned, I shall be glad to meet with you in this office at your convenience if you will give me a few days advance notice.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS/:ph
Enclosures

cc: --- -- Auditing (JFH)

Honorable James E. Sabine
Assistant Attorney General