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STATE OF CALIFORNIA

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STATE BOARD OF EQUALIZATION

January 30, 1950

Dear REDACTED TEXT:

This is in answer to your recent letter with respect to the application of State sales tax to various transactions of your client, a contractor engaged in the business of installing, repairing, and maintaining elevators. Our answers are in the order that the transactions are listed in your letter.

1. Elevators are regarded as "fixtures" and the application of the tax to the furnishing and installation thereof is governed by that section of Sales and Use Tax Ruling 11, copy enclosed, entitled "Fixtures Furnished and Installed by Contractors." As therein indicated, in the case of lump-sum contracts, the retail selling price of the fixture is regarded as the cost price of the fixture to the contractor. Although the contractor is the retailer of the fixture, he is permitted, for convenience, to purchase the fixtures on a tax-paid basis. The contractor is, however, the consumer of the "materials" used to repair the elevators, and the tax, accordingly, applies to the sale price of the "materials" to the contractor.
2. (a) On time and material contracts the contractor is the retailer of the "fixtures" furnished and installed, and the consumer of "materials" used in fulfilling the contract. Accordingly, the tax is measured by the sales price of the "fixtures" and the cost price of the "materials." Where, however, the contractor bills the "materials" at a marked-up price and bills his customer for "sales tax" computed upon such marked-up price, he will be regarded as the retailer of such "material," as indicated by the second paragraph of that section of Ruling 11 entitled "Materials Used by Contractors."
2. (b) Where "fixtures" are purchased on a tax-paid basis and are furnished and installed under a time and material contract, it is proper for the contractor to take a tax-paid deduction pursuant to Ruling 71, copy enclosed.

Where "materials" used in fulfilling a construction contract are purchased on a tax-paid basis, a taxpaid deduction should be taken only if the contractor is regarded as the retailer of such materials, as indicated above, and reports the sales price thereof as a part of his taxable gross receipts.

3. As the lubrication of an elevator installed in a building is in the nature of a repair to real property, it would appear that the contractor is the consumer of oil and other "materials" used. Accordingly, it appears that it is proper for the contractor to purchase the oil on a tax-paid basis.

Very truly yours,

R. G. Hamlin  
Associate Tax Counsel

RGH:HB