

March 24, 1970

"E"

Dear Mr.

Thank you for sending a copy of the contract for fuel service between "C" and "E". In the second paragraph of your letter of March 4, 1970, you ask that we treat this material at least as semi-confidential.

We, of course, have no reason to treat this information other than as confidential. Also Section 7056 of the Revenue and Taxation Code limits the Board and its employees from divulging information regarding the business affairs of taxpayers.

After a substantial amount of consideration and study, we are of the opinion that "E" is the consumer of tangible personal property purchased for use in California in fulfilling this contract. This conclusion is based upon two basic considerations:

1. The actual fuel is not furnished by "E"--it is obtained from "A" by "C".
2. The service element is great in comparison to the value of the material furnished by you.

Whether or not the amount of tax reported with respect to this contract is correct is subject to audit verification.

If we can be of further assistance in this matter, or if you have further questions, please feel free to inquire.

Very truly yours,

Jack D. Paulson  
Tax Counsel

JDP/vs [lb]

March 4, 1970

Dear Mr.

It was a pleasure to meet with you on February 25, 1970 in REDACTED TEXT and to view the "S" Station on February 26.

We have considered the questions raised by you and our Out-of-State District with respect to the current audit of "W". The opinions expressed herein deal with major components. It is my understanding that we agreed that guidelines in this area would be sufficient for purposes of completing the audit.

It is our position that steam generators (heat exchangers) are fixtures as defined in sales and use tax ruling 11. This position, we believe, is called for under the specific language of the ruling which defines "fixtures" as things which are accessory to a building and which do not lose their identity as accessories when placed or installed. Included in the example of fixtures are furnaces, boilers and heating units. We believe, without question, that the heat exchangers would definitely fall within the general classification of a boiler, or at least a heating unit. We appreciate the fact that the units are rather large, approximately 50 feet in height and 15 feet in diameter. However, information furnished by you indicates that they are totally prefabricated prior to the time of installation, and were, in fact, shipped to the site in the prefabricated condition.

We believe the same conclusions are required with respect to pressurizers. Concededly, they are not boilers or heating units. However, they are apparently a complex unit designed to perform a specific function, and they do not appear, from the information furnished, to be merely a pipe.

We believe the control rod mechanism, pumps and motors in the primary system should also be regarded as fixtures, inasmuch as they do not lose their identity as accessories when placed or installed.

You are undoubtedly correct in assuming that the balance of the components of the nuclear steam supply system is materials. However, there may be some variables in this conclusion with respect to some small items. I am confident that any differences in this area can be resolved at local level with the auditor.

Since you purchased the reactor vessel, it is not necessary, for purposes of the audit, to determine its classification. However, we believe consistent administration would require that it also be classified as a fixture under Ruling 11.

During our tour of the plant, I asked Mr. "O" some questions about the condensers. Based upon information obtained from him with respect to their size and nature of installation, it is my position, as suggested by you at our conference, that they be classified as "materials" under ruling 11.

You also requested an opinion with respect to a radio telescope. Based upon the information furnished, the radio telescope is mounted upon a base carriage assembly which travels on permanently installed rails. Mounted upon top of the base is a lower pedestal assembly which

supports an upper pedestal assembly, on top of which is mounted the necessary gear to support and move the dish. The dish has a diameter of 130 feet, and can be rotated or elevated to suit the needs of the occasion.

It is our position that this item is neither materials nor fixtures under ruling 11, except for the rails. From a precedent standpoint, I have discovered that the Board classified a traveling ship loader as a gigantic machine and not as an addition to realty, for purposes of the Sales and Use Tax Law. Therefore, the labor necessary to erect it at the site was considered to be fabrication labor, and the charges therefore were included in the measure of tax. We believe a classification of the radio telescope as other than personalty would be a departure from the ruling on the traveling ship loader, and inconsistent therewith.

In researching this area, I found a copy of a letter dated May 4, 1967 which has been annotated at paragraph 1261.53 of the Cal. Tax Service, copy enclosed for ready reference. You will note, however, that this particular installation was affixed to the land upon a foundation. We believe there is a distinction between this and the antenna which is mounted on a movable carriage assembly.

Also enclosed is a copy of a letter about which you inquired, annotated as paragraph 1808.90 - Service Enterprise in General - High-Energy Irradiation. It appears that I issued this opinion.

We spoke briefly to the issue of including in the measure of tax for fixtures certain administrative overhead. I have deliberately not ruled upon this because it was my understanding that you and Mr. "B" conceded that overhead factors should be included in the measure of tax for fixtures. The differences seem to be in establishing how much should be included. As I recall, Mr. "B" indicated that this would be worked out with the auditor.

As soon as we receive a copy of the fuel service contract, we will issue an opinion with regard to the application of tax to it. In addition, it was my understanding that you were to furnish me the date and title of the annotation regarding a computer about which you inquired. As soon as this information is received, we shall be happy to furnish you a copy of the letter ruling.

A copy of this letter is being furnished to our Out-of-State District to be used as a guide in completing the audit. As you are, of course, aware, if you still desire to protest our position after the audit has been completed and the determination has been issued, you may petition for a redetermination and present your arguments to a hearing officer and to the Board, if you so desire.

Mr. Allen and I appreciated our tour through the facility, and particularly enjoyed meeting with you. If we can be of further assistance in this matter, please advise.

Very truly yours,

Jack D. Paulson  
Tax Counsel

JDP/vs [lb]