

800.0009

Mr. O. A. McCarty
Supervisor, Return Review

March 22, 1991

John Abbott
Senior Tax Counsel

District Transactions and Use Taxes - Fixed Price Contracts

Mr. Geoff Lyle, Audit Evaluation and Planning Unit, gave me a copy of Mr. Alan Giorgi's February 8, 1991 memorandum to Return Review Section tax representatives, specialists, and the supervisors regarding the fixed price contract exemption for district transactions and use taxes. Mr. Giorgi referred to an August 11, 1982 memorandum from the Principal Tax Auditor to District Administrators regarding fixed price contracts, which included several examples of what would be considered fixed price contracts. Mr. Giorgi stated that Mr. John Waid, Tax Counsel, indicated in a conversation with Mr. Giorgi that Mr. Waid would not consider either item a. ("Machinery, \$10,000.00") or item d. ("Machinery, \$10,000.00 FOB St. Louis, plus Missouri sales tax") listed in the Principal Tax Auditor's memorandum to be fixed price contracts.

While Mr. Giorgi correctly quoted Mr. Waid's advice, that advice was not correct. A fixed price contract exempt from the imposition of a new district transactions and use tax includes a contract which is for a fixed amount and contains no provisions at all regarding California sales and use taxes. In these two examples, the seller is precluded from collecting district transactions tax reimbursement or district use tax from the purchaser. The contracts qualify as fixed price contracts, assuming of course that the other requirements for a fixed price contract are met.

I enclose copies of Mr. Giorgi's February 8, 1991 memorandum and the Principal Tax Auditor's August 11, 1982 memorandum.

JA;tcs/3787I

Enclosures

cc: Mr. Glenn Bystrom
Mr. Geoff Lyle
Mr. John L. Waid