

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
(916) 445-5493

January 23, 1990

REDACTED TEXT  
REDACTED TEXT Regional Transit District  
REDACTED TEXT

REDACTED TEXT Regional Transit District-SR KH REDACTED TEXT  
REDACTED TEXT – SZ OH REDACTED TEXT  
District taxes and state sales tax increase – fixed-price contracts

Dear Mr. REDACTED TEXT :

In your January 3, 1990 letter to Mr. Les Sorensen, Senior Tax Counsel, you request our opinion on two issues involving a contract which the REDACTED TEXT Regional Transit District (REDACTED TEXT) entered into on March 29, 1989 with REDACTED TEXT. REDACTED TEXT contracted to furnish ten new light rail vehicles to REDACTED TEXT RTD. REDACTED TEXT is partially manufacturing the vehicles in Europe, and final assembly and delivery is to take place in Sacramento. The contract specifically itemizes California state sales tax as 6% and the contract is for a lump-sum amount.

You enclosed a copy of the March 29, 1989 contract with REDACTED TEXT. Under Section 2, General Provisions, paragraph 2.30 provides that the contractor (REDACTED TEXT ) will pay all sales, use, and other similar taxes. Paragraph 2.51 provides that the contractor agrees to accept the lump-sum amounts due from REDACTED TEXT RTD as full and final payment for all costs, including taxes, incurred by the contractor in performing its obligations under the contract. Paragraph 2.51 also provides that this is a fixed-price contract with no escalation.

You write:

“Our questions are two-fold on this contract. First, what is the applicable state sales tax rate to be used? The contract was executed prior to implementation of the ½% transportation tax in Sacramento County and prior to the ¼% statewide earthquake tax; however,

REDACTED TEXT RTD will not start to take possession of the vehicles until late fall 1990.

Second, when is REDACTED TEXT obligated to pay sales tax to the State of California? The value of the sales tax, \$828,000 (at 6%), is substantial. If sales tax is not due until the delivery of the vehicles to REDACTED TEXT RTD, then REDACTED TEXT RTD will withhold any tax payments to REDACTED TEXT until that time.”

### Opinion

As you are aware, the Sacramento County district transactions and use tax ordinance became operative April 1, 1989. For all such new district taxes, Transactions and Use Tax Regulation 1823 provides in summary that if the seller is obligated to sell, and the buyer is obligated to purchase, tangible personal property pursuant to a fixed-price entered into before the operative date of the district tax ordinance, and no party to the contract has an unconditional right to terminate the contract, then sales of tangible property occurring after that date are exempt from the district transactions and use tax. (Reg. 1823, subdivisions (a)(2)(C), (b)(2)(D), and (d)).

By contrast, the ¼% increase in the state sales and use tax rate which became effective December 1, 1989 (SB 33, Chapter 14, Statutes 1989, First Extra Session), contained no comprehensive provision exempting fixed-price contracts from the tax increase. Rather Revenue and Taxation Code Section 6376, enacted as part of SB 33, enacted a limited exemption from the tax increase for certain qualifying fixed-price construction contracts and leases only.

Since the contract between REDACTED TEXT and REDACTED TEXT RTD is neither a construction contract, nor a lease, the sale of the light rail vehicles to REDACTED TEXT RTD is subject to the ¼% state tax increase. However, since the contract calls for a lump-sum amount for the light rail vehicles, which includes a fixed amount for sales and use taxes calculated at 6%, the contract qualifies as a fixed-price contract exempt from Sacramento County district transactions and use taxes. Thus, if the light rail vehicles are delivered in calendar year 1990, the applicable tax rate is 6 ¼%, not 6%. On January 1, 1991, the state sales and use tax rate increase is scheduled to expire, and the tax rate will revert to 6%.

In answer to your second question, state, local, and district sales and use taxes apply to taxable transactions when the tangible personal property is delivered from the seller to the buyer, regardless of when the purchase price is due, or is paid. Therefore, if the light rail vehicles are delivered to REDACTED TEXT RTD in the fourth quarter 1990, tax applies during that quarter, regardless of when REDACTED TEXT RTD makes progress payments to REDACTED TEXT under the contract. The taxes are due and payable to the Board at the end of the first month following the end of a calendar quarter. (Rev. & Tax. Code § 6451).

Mr. REDACTED TEXT

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I enclose Regulation 1823 for your information. Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott  
Senior Tax Counsel

JA:jb  
Enclosures.