



STATE BOARD OF EQUALIZATION

Sacramento, California
June 18, 1952

Account No. X - XXXX

In reply to your letter of May 2, it is our opinion that whether the dumping of rock in a breakwater constitutes the improving of realty depends on the work, if any, which must be performed on the rock after it is dumped. The pouring of ready mixed concrete in a form is not considered to be improving realty because the concrete must be spread, tamped, and smoothed after it is poured. Likewise the spreading of gravel is not an improvement of realty because after it is spread it must be leveled, tamped and rolled.

The present case will turn on whether or not additional work need be performed on the rock after it is dumped on the breakwater. If the dumping of the rock from the barge is the last act necessary to put the rock in place in the breakwater, then the dumping of the rock is an improving of realty rather than a sale of tangible personal property.

We understand that the --- --- is not a member of the Joint Venture but is instead a sub-contractor under the Joint Venture. Assuming that the work is to be regarded as improving realty, the --- --- Company is the consumer of all materials purchased by it.

Likewise, under a similar assumption, the Joint Venture is a consumer of materials purchased by it. Therefore it is important to determine whether the members of the Joint Venture are selling rock to it or contributing rock to its capital. The members of the Joint Venture are contributing either rock or cash to the Joint Venture. It is very likely that they are contributing rock and not cash to the Joint Venture. The use of a Bill of Sale is not determinative because a Bill of Sale would be appropriate in either case. The transaction is a sale only if the parties clearly indicate that they consider themselves as selling rock to the Joint Venture and not as contributing rock to its capital. In such a case the parties must necessarily have established a Joint Venture bank account prior to the delivery of any rock; but the establishment of such an account would not necessarily negative a contribution of rock to the capital of the Joint Venture.

EHS:ja