



STATE BOARD OF EQUALIZATION

July 18, 1968

U--- O--- C--- of California
P. O. Box XXXX
--- ---, CA XXXXX

Attention: Mr. W--- M. P---
Attorney

SZ -- XX XXXXXX

Gentlemen:

In your letter of June 28, 1968, you ask whether Conclusion 2 of Example 3 of our letter of June 18, 1968, would be changed if U--- entered into a single contract to have the pipe welded and laid and a subcontractor or employees of the contractor did the welding.

For the following reasons, it is our opinion that if a subcontractor did only the welding, his charges would be taxable; but if employees of the contractor did both the welding and the laying, none of the contractor's charges would be taxable.

As we previously indicated to you, it is our view that the welding constitutes a fabrication of the pipe and a "sale" under section 6006(b). This fabrication is completed before the pipe is laid in its final resting place, i.e., before the pipe is installed. Although this particular welding process is close in point of time and location to the laying process, it is not essentially different from welding the pipe into an entire length well before it is laid and far from the final resting place.

If the welding is done by a person or entity other than the person or entity that lays the pipe, the welder is a retailer just as the subcontractor who sold the door frames in the Overly Hayward case was a retailer. A person is a construction contractor under ruling 11 only if he performs the final act of installation. The welder comes close to participating in the final installation, but it should be noted that the cement manufacturer in Hayward was considered a retailer even though by pouring the cement into the forms he too came very close to participating in the final installation.

The result will be different if the same person or his employees do both the welding and the installation. A contractor who performs the final act of installation of customer furnished materials is considered to be the consumer of any material that he himself furnishes and is not considered to be fabricating the customer furnished materials within the meaning of section 6006(b) unless the item is a fixture. The pipe in question, in our opinion, constitutes "materials" under ruling 11 and not a fixture.

We hope that this letter adequately explains our views.

Very truly yours,

T. P. Putnam
Tax Counsel

TPP:kc

cc: Mr. W. T. D---
Mr. B. D. D---
Mr. H. A. D---
Mr. F. T. L---
Los Angeles District – District Administrator
Hollywood – Subdistrict Administrator