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**STATE BOARD OF EQUALIZATION**

April 1, 1953

--- --- Co.  
XXXX --- Street  
--- --- X, California

Your letter of November 26,  
1952

Attention: Mr. W. W. C---y

Account No. B-XXXXXX

Gentlemen:

You inquire concerning the application of sales tax to your time-and-material contracts to provide labor and material to improve real property.

The application of sales tax to construction contractors is governed by Sales and Use Tax Ruling 11 (copy enclosed). Contractors are normally regarded as the consumers of "materials" and the retailers of "fixtures" when performing construction contracts, as defined therein. We assume that all the items used by you in your waterproofing concrete work fall within the classification of "materials". Accordingly, you normally would be the consumer of all items used in your contracts and none of your charges would be subject to sales tax.

Note the second paragraph of that portion of Ruling 11 titled "Materials Used By Contractors". As there indicated, a contractor will be regarded as selling "materials" if he charges sales tax reimbursement on a marked-up billing for materials. This special provision applies in the case of the contract which you sent to us on which you billed your customer materials at cost, added fifteen percent overhead, and added ten percent of the total of the first three items as profit.

The measure of the tax, however, is the price on which you compute sales tax reimbursement. Since you do not include the ten percent profit in the base on which sales tax reimbursement is computed, it is not includible in the measure of your liability to the State.

We are asking our --- --- office to review the recent audit in the light of this letter, and, if you have overpaid your tax, an adjustment will be made.

Very truly yours,

W. W. Mangels  
Assistant Counsel

BH:ja

cc: --- --- - Auditing

In the recent audit of this account, liability was apparently set up on the taxpayer's complete charge for materials under a time-and-material contract. We think that the correct measure is merely the amount on which the taxpayer computes sales tax reimbursement. Your review and recommendation are requested.

W. W. M.