



STATE BOARD OF EQUALIZATION

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March 31, 1989

Mr. --- --- - Owner
A & B ---
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---, CA 9XXXX

A & B --- – SR XXX XX-XXXXXX
E-- M-- --- “---” – SR XX XX-XXXXXX
Construction contractors – sales of materials on
Indian reservations.

Dear Mr. ---:

Your January 4, 1989 letter to the Franchise Tax Board was referred to the State Board of Equalization for reply, since it is this agency which administers the Sales and Use Tax Law. In your letter you enclosed correspondence which you have received from the R--- V--- L--- R--- Band of P--- Indians, and from a contractor, E—M-- --- “---” (R--- and R--- ---, owners), concerning a construction contract performed on the Indian reservation. You relate that the P--- I--- Band’s contention is that the tribe should receive the sales tax on all materials supplied to the construction project in Redwood Valley. You ask if this is a legitimate claim, and if so are there procedures and forms to accomplish this.

Among the letters you enclosed is a December 28, 1988 letter addressed to whom it may concern from the R--- V--- L--- R--- Band of P--- Indians, which states that it is a federally recognized tribe exempt from state sales taxes. Also, the Band’s December 6, 1988 letter to R--- and R--- --- relates the provisions of a tribal sales tax ordinance imposing a sales tax on construction contractors engaged in business on the reservation.

Opinion

We cannot, of course, give you an opinion on the validity of the tribal tax imposed on contractors by the Band. This would be a matter between the Band and the construction contractors on whom its tax is imposed. I assume your letter is concerned with whether or not you are liable for sales or use tax which the State of California imposes on your sales of materials, regardless of whether or not a tribal sales tax may also apply.

The Board's Sales and Use Tax Regulation 1616(d) sets out the application of sales and use tax to Indians and Indian tribes on and off the reservation. Where a non-Indian retailer makes a sale to a non-Indian customer whether on or off a reservation, or to an Indian customer off a reservation, sales tax applies if the sale is otherwise taxable. Sales by non-Indian retailers to Indians are not taxable if the delivery is made to the purchaser on the reservation and ownership transfers to the purchaser on the reservation. Regulation 1616(d)(4)(A).

Under Regulation 1521(b)(2)(A), construction contractors are normally consumers rather than retailers of materials which they furnish and install in the performance of a construction contract. Thus, tax applies to the sale by the vendor of the materials to the construction contractor, and tax does not apply to the transaction between the contractor and the owner of the real property on which the construction contract is performed. A construction contractor may be considered a retailer of materials, rather than a consumer of materials, if the provisions of Regulation 1521(b)(2)(A)(2) apply, which states as follows:

“2. The Contractor is Seller. A construction contractor may contract to sell materials and also to install the materials sold. If the contract explicitly provides for the transfer of title to the materials prior to the time the materials are installed, and separately states the sale price of the materials, exclusive of the charge for installation, the contractor will be deemed to be the retailer of the materials.”

A contractor who is a retailer rather than a consumer of materials must hold a California seller's permit and report and pay tax on his sales of materials. Such a contractor would issue to the seller a resale certificate under Regulation 1668.

If the construction contract is performed on an Indian reservation, and if the construction contractor is the consumer, not the retailer of the materials, then Regulation 1616(d)(4)(C)(2) provides as follows:

“Non-Indian contractors. Sales tax applies to sales of materials to non-Indian contractors notwithstanding the delivery of the materials on the reservation and the permanent attachment of the materials to realty. Sales tax does not apply to sales of fixtures furnished and installed by non-Indian contractors on Indian reservations.”

If you have sold materials to a construction contractor for use on an Indian reservation, the sales tax will normally apply to your sale of the materials since your sale was to the contractor, not to the Indian tribe. The tax will not apply to your sale only if the contractor holds a valid seller's permit and gives you a resale certificate showing that he purchased the materials for resale. If you timely take a resale certificate in good faith from the contractor as required under Regulation 1668, then you may exclude the sale from your taxable gross receipts. The contractor's sale of the materials to the Indian tribe may or may not be taxable depending on the contract between the contractor and the Indian tribe.

Mr. --- ---

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I enclose copies of Regulations 1521, 1616, and 1668 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