



STATE BOARD OF EQUALIZATION

February 24, 1956

P--- K--- S--- Co. Contractors
xxx --- Avenue
---, California

Attention: Mr. J. G. F---

Gentlemen:

Your letters of January 23 and February 17 addressed to Mr. Harry L. Say, Sales Tax Administrator, have been referred to the undersigned for attention.

You state that during the recent sand and gravel strike in Southern California, at the request of the Corps of Engineers, U. S. Army, you moved a crusher owned by you to government property and crushed material for certain army flood control projects. Apparently, you performed this crushing under a subcontract with a prime contractor in view of your statement that you billed the contractors for the material. These contractors were reimbursed by the Corps of Engineers.

Inasmuch as your contract appears to have been with the prime contractor, which contractor paid you for the crushing of the material, it seems to us that you actually processed material for a prime contractor and not for the Corps of Engineers. Your processing constitutes a sale under Section 6006(b) of the Sales and Use Tax Law and Ruling 15, copy enclosed. The fact that the material crushed by you was owned by the Corps of Engineers is, in our opinion, immaterial. The fact remains that under the contract with a prime contractor you processed material furnished by your customer.

You will note from our Ruling 15 which quotes Section 6006(b), that the processing of property for consumers "who furnish either directly or indirectly", the materials used in the processing is a sale. It is our opinion, from the facts you have stated, that you processed material furnished directly or indirectly by your customer, the prime contractor, and that your receipts therefrom are legally subject to the sales tax.

The fact that the Corps of Engineers may be the "ultimate" owner of the material is not controlling because, as you know, Section 6384 of the Sales and Use Tax Law imposes the tax with respect to sales to contractors "purchasing such property either as the agents of the United States or for their own account and subsequent resale to the United States for use in the performance of contracts with the United States for the construction of improvements on or to real property in this state."

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:ds