



565.0600

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

March 18, 1957

Your letter of March 1

Attention: REDACTED TEXT
Director, Division of Supplies

Gentlemen:

In your letter you quote excerpts from an opinion of your General Counsel relative to the application of California sales tax to screenline equipment furnished and installed by the REDACTED TEXT Company in premises leased by the Federal Government for post office facilities. We wish to point out a significant omission in the General Counsel's opinion. The General Counsel quotes a portion of Ruling 12 which lists four separate factors. In the General Counsel's opinion factor number two reads "It either is not attached to the realty or, if attached, is readily removable as a unit". The ruling itself contains additional words following "unit". These words are "(as distinguished from 'fixtures')". (See below)."

After listing the four factors the ruling gives examples of "machinery and equipment" and of "fixtures". It is our opinion that under the definitions and examples given that the screenline falls within the fixtures category rather than the machinery and equipment category.

It is also asserted that the tax does not apply because title passes at the contractor's factory and prior to installation. But Section 6384 of the California Revenue and Taxation Code which is quoted in your General Counsel's opinion provides that the sale of tangible personal property to a contractor is at retail and is taxable, if the contractor used the property in the performance of a contract with the United States for the construction of improvements on or to real property. Since the screenline is used in the performance of a contract to improve real property, its sale to REDACTED TEXT is taxable. The time at which title passes is immaterial. Accordingly, the assessment made against REDACTED TEXT Company is based on the price which paid for the screenline. The measure of tax does not include any installation costs, markup or fabrication costs by REDACTED TEXT.

We believe that the assessment made was correct and we are unable to recommend that it be cancelled.

Very truly yours,

Bill Holden
Associate Tax Counsel

cc: San Francisco - Compliance