



STATE BOARD OF EQUALIZATION

September 21, 1953

T--- and T---
Attorneys at Law
XXX --- ---
--- --- XX, California

Attention: Mr. J--- D. M---

AU-XXX & AG-XXXXX
R--- E. M---
G--- C---, Inc.

Gentlemen:

We have reviewed your letter of August 12 from which it appears that your client, the prime contractor, let a subcontract to metal O--- F--- Company for the installation of servidors in the S--- Center. Due to labor difficulties the subcontractor was unable to complete performance whereupon your client, pursuant to a provision of the subcontract, completed the installation of the servidors, deducting from the subcontract price the actual cost of labor used in making the installation, plus a percentage overhead, taxes and insurance.

The question appears to be whether this resulted in a sale of the servidors to your client with sales tax accruing on the gross receipts therefrom. Had this change not occurred, the subcontractor would have been regarded as the consumer of the materials from which it manufactured the servidors, use tax applying with respect to the cost of such materials.

Although we have not seen any of the documents or letters relating to this transaction, other than those portions quoted in your letter, it appears to us a proper conclusion that there was no sale to you by the subcontractor of the servidors in question. We believe it is reasonable to say that the subcontractor, under an obligation to install servidors, obtained the assistance of your client in fulfilling that obligation in consideration of a reduction of the subcontract price. Thus, your client installed servidors belonging to the subcontractor without acquiring title thereto. In our opinion there is no additional tax due on account of the fact that your client assisted its subcontractor in completing its subcontract and we are so informing our Los Angeles Office by sending them a copy of this letter.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:ph
cc: Los Angeles – Review (PER)