

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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April 13, 1976

Mr. J--- S---
General Manager
U--- V--- Co., Inc.
Post Office Box XX
---, CA XXXXX

Dear Mr. Schack:

SR OH XX XXXXXX

On October 6, 1975, we wrote to you to advise you as to how the California sales tax would apply in instances where you deliver precast concrete utility vaults into prepared excavations.

To restate the facts, the vaults in question are delivered by your truck. Some of the vaults are as large as 18' x 4' x 10'. Your truck driver operates a boom which is used to lower the pieces of the vault into the excavation. A typical large vault may consist of a lower compartment, four rings built up from the compartment, and a top piece closed by a manhole cover. You quote to contractors on the basis of "F.O.B. bottom of you prepared excavation". The contractor is required to do the excavating and grading. The contract also provides for "location and alignment by contractor". The contractor is then obligated to backfill, connect piping, and cover to grade.

We advised you that under these facts you were making sales of tangible personal property and that the sales were sales subject to tax measured by the full sales price. We concluded that your contracts did not qualify as construction contracts under our Regulation 1521 "Construction Contractors".

Upon careful review of this question, we are of the opinion that henceforth these contracts should be treated as construction contracts even though location and alignment may be performed by the general contractor. The term "construction contract" means a contract for erecting a building or other structure on land. We are of the opinion that the utility vaults in question constitute structures and that you may be regarded as erecting the vaults on land when your employees lower the vaults to their permanent resting place in the excavations.

Under Regulation 1521, you would be the consumer of materials which become a part of the completed vaults. This means that tax would apply to the sale to you of cement and other items

becoming a part of the vaults in question. Tax would not apply to your charges to your customer. This approach would be consistent with the approach we have taken with respect to septic tanks. A person who furnishes and places a septic tank in its final resting place with no further movement being made of the tank is regarded as a construction contractor.

You would remain a retailer of vaults in instances where you deliver vaults to your purchaser's storage facility or to the jobsite for later placement by the purchaser. Tax would apply to the full sales price of these vaults.

Since for sales tax purposes you will be the retailer of certain of the vaults and the consumer of other vaults which you deliver into prepared excavations, you would be permitted to purchase all materials under resale certificates, reporting and paying use tax with respect to materials incorporated into those vaults with respect to which we will no regard you as a construction contractor.

This change will have the affect of making more uniform the application of the sales tax law. We regret all inconveniences our prior interpretation may have occasioned you, and we thank you for your patience in this matter.

Very truly yours,

Gary J. Jugum
Tax Counsel

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