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October 17, 1996

Ms. M--- N---
E--- Systems
XXXX --- --- Avenue
Suite XXX
---, California XXXXX

Re: E--- Systems
Permit No. SR -- XXXXXXXXXXX

Dear Ms. N---:

This is in response to your letter dated August 6, 1996, requesting advice as to the application of sales tax to freight and/or installation labor of wastewater treatment equipment. In your letter, you state:

“E--- Systems designs and manufactures, (manufacturing is done through a sub-contractor), equipment used in wastewater treatment of municipalities and industrial applications. We are strictly an equipment supplier and are not involved in the installation of such equipment at the job site. We do, however, have a sub-contractor that goes to the job site when the equipment is ready to begin operation and assists in the ‘start-up’ of the equipment. The equipment is shipped to the job site via common carrier.

“The equipment is bid and invoiced as a lump sum price. There are no separate line items on the invoice for start-up costs, freight costs or materials. There are breakdowns for these costs in our bid work up sheet.”

Our understanding of your question is whether a portion of your lump sum charge is excludable from tax. Before addressing that question, we will provide some background information. Revenue and Taxation Code section 6051 imposes a sales tax on all retailers

measured by their gross receipts from retail sales of tangible personal property unless the sale is specifically exempt from taxation by statute. Although Revenue and Taxation Code section 6012 provides that a retailer's gross receipts include the total amount of the sales price and charges for any services that are part of the sale, charges for labor or services used in installing or applying the property sold are excluded from the taxable gross receipts. (Rev. & Tax. Code § 6012(c)(3).) You indicate that E--- does not install the wastewater treatment equipment that it sells. Therefore, this exclusion does not apply.

Services that are a part of the sale include any the seller must perform in order to produce and sell the property, or for which the purchaser must pay as a condition of the purchase and/or functional use of the property, even where such services might not appear to directly relate to production or sales costs. If E--- requires the purchasers of wastewater treatment equipment to purchase the start-up services as a condition of purchase and/or the functional use of the equipment, then that start-up service is considered a service that is part of a sale. Although you do not describe the start-up service, it appears to be part of the sale, and the charge is therefore taxable as part of the gross receipts for the sale of the wastewater treatment equipment.

In regards to your question concerning the taxability of freight charges, you note that wastewater equipment is shipped to the job site via common carrier. Enclosed is a copy of Sales and Use Tax Regulation 1628, Transportation Charges. As noted in subdivision (a), tax does not apply to separately stated charges for transportation of property from the retailer's place of business directly to the purchaser by common carrier.

According to your letter, freight costs are not separately stated on the invoice. Therefore, even though all shipping is done by common carrier, tax does not apply to E---'s charges for transportation of the wastewater equipment from E---'s place of business or other point from which shipment is made directly to the purchaser.

If you have other questions regarding the application of sales tax law, please do not hesitate to write again.

Very truly yours,

Robert E. Thomas
Tax Counsel

RET/cmm
Enclosure

Cc: --- District Administrator (--)