

**STATE BOARD OF EQUALIZATION**

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January 4, 19878

Mr. --- -, ---  
Attorney at Law  
P. O. Box XXX  
--- --- --- Street  
---, CA 9XXXX

Dear Mr. ---:

The Board's Principal Tax Auditor has asked me to review three construction contracts entered into by the --- --- Indian Housing Authority (Housing Authority) and to correspond with you regarding the application of the Sales and use Tax Law to those contracts.

It is my understanding that the following nomenclature has been used to identify the contracts in prior discussions with you: The R-- Contract; the M-- - P-- --- Contract and; the H-- Contract. For the sake of convenience, we will continue to utilize this nomenclature in our discussion herein.

The R-- Contract

This contract provides that the housing authority will pay the contractor a stipulated amount (\$---) for performance of the contract. However, the total sales price of all materials (\$---), exclusive of the charge for installation, is also stated in the contract. Additionally, Section 7 of the contract, entitled "Partial Payments", provides in subsection (c) that title to all materials to be used in the project is transferred to the owner (Housing Authority) prior to the time the materials are installed by the contractor or subcontractor. We understand the contractors and subcontractors are non-Indians.

Pursuant to the advice which I gave you in my letter of January 7, 1985, it is our opinion that the foregoing contract provisions operate to make the construction contractors and subcontractors "sellers" of materials within the meaning of Regulation 1521(b)(2)(A)2. It follows the contractors and subcontractors who furnish and install materials on the reservation as required by this contract may purchase such materials from their vendors ex-tax by issuing resale certificates. The subsequent retail sales of materials to the Housing Authority on the reservation are exempt from tax (see Revenue and Taxation code §6352; Regulation 1616 (d)).

The M-- - P-- --- Contract

Similar to the R-- Contract discussed above, this contract stipulates an amount for performance of the contract (\$---). It also lists the sales price of all materials used in the project (\$---), exclusive of the charge for installation. Further, we understand the contractors and subcontractors are non-Indians. However, this contract differs significantly from the R-- contract in that there is no explicit requirement that title pass prior to installation.

Again, as indicated in my letter of January 7, 1985, it is critical that there be both a separate statement of charges for materials as well as specific title passage provisions in order for the contractors or subcontractors to be deemed "sellers" of materials. It follows, the contractors or subcontractors working under this contract are deemed to "consumers" rather than the "sellers" of the materials. They may not purchase such materials ex-tax for resale from their suppliers, rather they come within the general provisions of Regulation 1521(b)(2)(A)1 and tax applies based upon their purchases of such materials.

The H-- Contract

The terms of this contract are similar to those of the M-- - P-- --- Contract discussed above. However, it is our understanding that the contractors and subcontractors performing this contract are Indians living on the reservation. Assuming delivery of the materials to the Indian contractors and subcontractors is on the reservation, the sales of materials to them would be exempt from tax in accordance with Regulation 1616(d)(4)(C).

If you have any questions with respect to the foregoing discussion, feel free to contact me at (916) 445-8485.

Sincerely,

E. L. Sorensen, Jr.  
Senior Tax Counsel

ELS:jb

cc: Mr. Glenn A. Bystrom