



STATE BOARD OF EQUALIZATION

December 28, 1970

E--- O--- W--- S--- Company
P. O. Box XXXXX
---, TX XXXXX

SY -- XX-XXXXXX

Attention: Mr. C--- W---

Gentlemen:

Your letter dated June 29, 1970 addressed to the California State Board of Equalization was referred to me for reply. Please excuse the delay in my response.

You state that you offer a controlled directional drilling service and that in the performance thereof you rent and/or use tools which remain under the control of your operator performing said service. In some cases, you furnish a Dyna-Drill tool which you rent, paying tax therefore on a combination tool run and hourly usage basis, and for which you bill a stated rate per day for directional drilling supervision and a separate charge for tool runs. In other cases, you furnish a Turbodrill tool which you own and for which you similarly bill a stated rate per day for directional drilling supervision and a separate charge for tool runs. In addition, you furnish other tools which you own or rent and for which you bill your customers.

Referring to a letter dated July 20, 1966 from Mr. J--- Q--- to D--- Company, you request that we expand upon a statement therein to the effect that as a tool was used in a service as opposed to rental no further tax would be applicable. Having reviewed that letter, I assume that you are referring to the last paragraph on page one wherein Mr. Q--- stated: "A directional oil driller who furnishes drilling tools and actually performs and supervises directional drilling operations is performing a service and not making taxable rentals."

The issue as to whether you have been renting drilling tools or using such tools in the performance of a service has previously been considered by the board and resolved upon the basis that you were renting such tools. In the course of a 1966 audit, it was concluded that you were renting tools, including Turbodrill tools, to your customers and separately stated amounts received therefore were included in the taxable measure as Exempt Rentals and Services Overstated. In 1967, a Notice of Determination issued in your name for tax and interest included tax on those amounts. Thereafter, A--- Company filed a Petition for Redetermination on your behalf, extended

correspondence ensued between Mr. G--- G--- of that company and Tax Counsel Glenn L. Rigby, it was again concluded that you were renting tools and that your charges therefore were properly included in the taxable measure, credit was given for material cost reported on such tools, and as adjusted, the tax was redetermined and became final. In the course of that correspondence, Mr. Rigby advised in regard to the above-quoted paragraph as follows:

“The key to Mr. Q---’s decision is that not only must the oil driller furnish and supervise the drilling operations, but he must actually perform them. This latter requisite appears to be missing in the E--- operation since we understand the tools are utilized on equipment owned, operated and staffed by E---’s customers.”

With regard to Turbodrills and other tools which you own, we have no information that you are conducting your business in a manner which differs from that in which you conducted it during the May 1, 1963 to June 30, 1966 audit period. Thus, for the reasons set forth in the course of the above-mentioned prior correspondence, we would continue to regard you as renting such tools and amounts received therefrom would continue to be subject to tax.

With regard to Dyna-Drill and other tools which you rent, I have referred to them separately since from the materials in my possession, I am unable to ascertain whether you rented such tools during the period of the prior audit. In any event, as we have no information that the manner in which you conduct your business is dependent upon whose tools you use, we would regard you as rerenting such tools, and assuming that you rerent the tools in substantially the same form, you can pay tax measured by the rental receipts paid to D--- Company or to other companies from whom you rent. (ruling 70(c)(2)(H), copy enclosed).

Very truly yours,

J. Kenneth McManigal
Tax Counsel

JKM:smb
Enclosure