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January 24, 1994

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 BURTON W. OLIVER  
*Executive Director*

Re: Application of Sales Tax  
 Regulation 1521/Construction Contractor  
 Fixtures and Materials  
Signs Affixed to Realty/Service Stations

Dear X----- :

This is in response to your letter dated December 3, 1993, regarding the application of tax to signs that you install for X----- . In your letter you state:

“We, X-----, reside in Arizona and hold a contracting license in California. The scope of work in California involves installing customer provided signs for X----- at their service stations. The work performed is entirely labor. There will be situations making it necessary from time to time to purchase materials in California in order to complete an installation. All installations become part of the real property of the particular service station when completed.

“Please advise if a sales permit is necessary and send documentation verifying the correct procedure in our particular situation.”

A "construction contract" means and includes a contract to erect, construct, alter, or repair any building or other structure, development, project, or other improvement on or to real property. (Sales & Use Tax Regulation 1521(a) (1) (A) (1).) X----- is performing a construction contract since the sign installation contract requires it to install the customer provided signs such that they will become part of real property.

A "construction contractor" is a person who performs a construction contract. (Reg. 1521(a) (2).) A construction contractor is generally a consumer of materials the contractor furnishes and installs pursuant to the construction contract. (Reg. 1521(b) (2) (A) 1.) This means that sales or use tax applies to the sale to the contractor of such materials. A construction contractor is the retailer of fixtures the contractor furnishes and installs pursuant to the construction contract. (Reg. 1521 (b) (2) (B) 1.) This means that sales tax applies to the sale by the construction contractor of such fixtures. Similarly, a construction contractor is the retailer of machinery and equipment the contractor furnishes and installs in connection with a construction contract. (Reg. 1521 (b) (2) (C) 1.) Thus, if a construction contractor is furnishing and installing

fixtures or machinery and equipment, the contractor is a seller under Revenue and Taxation Code section 6014 and must obtain a California seller's permit (Rev. & Tax. Code § 6066.)

You state that from time to time X----- purchases materials in California in order to complete an installation. The question is whether the property in question is materials, with respect to which you are a consumer, or if instead the property is either machinery and equipment or fixtures with respect to which you are a retailer.

Regulation 1521 defines "materials," "fixtures," and "machinery and equipment" for purposes of this analysis. Materials are defined in Regulation 1521 (a) (4) :

"Materials means and includes construction materials and components, and other tangible personal property incorporated into, attached to, or affixed to, real property by contractors in the performance of a construction contract and which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of real property. A list of typical items regarded as materials is set forth in Appendix A."

Fixtures are defined in subdivision (a) (5) of Regulation 1521:

“Fixtures means and includes items which are accessory to a building or other structure and do not lose their identity as accessories when installed. A list of typical items regarded as fixtures is set forth in Appendix B.”

You state that you are installing customer provided signs for various X-----service locations in California and that the work performed by X----- is entirely labor. Nevertheless, you also state that you will need to purchase materials to complete certain sign installations. You have not described the property which you will furnish nor have you described the signs which you will install.

For purposes of this opinion, I assume that the materials to which you refer qualify as "materials" within the meaning of Regulation 1521. As such, the retail sale of such materials which you will consume in the performance of the construction contract is the sale to you. You are not required to hold a seller's permit by virtue of purchases of such materials in California for use in construction contracts.

Appendix B to Regulation 1521 includes signs as items which are typically regarded as fixtures. Although certain signs are not fixtures, those which are accessory to buildings are<sup>1</sup> and for purposes of this opinion, I assume that the signs which X----- installs are fixtures within the meaning of Regulation 1521. Under subdivision (b) of Revenue and Taxation Code section 6006, the fabrication of tangible personal property for consumers who furnish, directly or indirectly, the property used in that fabrication is a "sale" for purposes of the Sales and Use Tax Law. If X----- performs fabrication of the sign prior to its installation, that fabrication is a sale the charge for which is subject to sales tax. If such is the case, X----- must obtain a seller's permit. On the other hand, if X----- performs no fabrication of the sign as discussed herein, and it furnishes and installs only property qualifying

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<sup>1</sup> A large outdoor free standing sign is regarded as a structure. (Business Taxes Law Guide Annotation 190.0560 [11/7/64].)

as materials within the meaning of Regulation 1521, it would not be regarded as a seller and would not be required to hold a seller's permit.

Copies of Regulations 1521 and 1699 (Permits) are enclosed. If, after review of this letter and the enclosed regulations, you find that you are required to hold a California seller's permit, please contact our Out-of-State District office at 450 "N" Street, MIC:OH, Sacramento, CA 95818-0268, (916) 322-2010. If you have further questions, feel free to write again.

Sincerely,

Gerald Morrow  
Tax Counsel

Enclosures: Regulations 1521 and 1668  
Cc: Out-of-State District Administrator