



STATE BOARD OF EQUALIZATION

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Executive Director

October 21, 1996

Ms. P--- O---
T--- - W--- Technology
P.O. Box XXX
---, California XXXXX

Re: T--- - W--- Technology
Seller's Permit No. SS -- XX-XXXXXX

Dear Ms. O---:

This is in response to your letter dated October 15, 1996 in which you state:

“We are Manufacturing Representatives for Agricultural Processing Equipment. Our scope has changed to include some manufacturing, installation and service repairs.

“We are contracting time and materials plus tax on materials and equipment. Could you please advise us of the tax implications on progress billing.”

A review of your file indicates that your question regarding progress payments may have resulted from general confusion as to the timing of your tax liability. A request for relief from penalty dated March 5, 1996 from Trans-West refers to your change in sales tax reporting to an accrual basis “when invoicing the customers.” It is true that payment of sales tax is on an accrual basis, and not on a cash receipts basis. However, sales tax must be reported and paid with the return for the period in which the sale occurs. The timing of the payment for the sale is not relevant to the timing of your liability for sales tax, nor is the timing of your invoice (except when the timing of the invoice or payment affects the timing of title passage).

For example, if you invoice and receive payment for property during one reporting period and make the actual sale during the next reporting period, you must report and pay the tax with

the return for the second reporting period, when the sale occurred, not the first reporting period, during which you invoiced and received payment. Similarly, if you make a sale in one reporting period and invoice and receive payment in the next reporting period, you must report and pay the tax with the return for the first reporting period, when the sale occurred, not the second reporting period, when you invoiced and received payment. If you receive progress payments for your sale of tangible personal property over four reporting periods and transfer possession of the subject property to the purchaser in the third reporting period, you would owe all the sales tax due with the return for a single reporting period. That reporting period would be the one during which the sale occurred. Since you would have transferred possession during the third reporting period, the sale would occur no later than that reporting period. (Cal.U.C.C. § 2401.) However, if title passed prior to that reporting period, you would owe the tax prior to the third reporting period. If, for example, the contract of sale provided that title would pass to the purchaser as soon as 30 percent of the purchase price was paid, the tax would be due with the return for the period in which 30 percent of the purchase price was made.

In summary, the general rule is that payment of the selling price by progress payments does not affect the timing and amount of your liability for sales tax. Your tax liability will always accrue during the reporting period in which the sale occurs. However, the progress payments may be relevant to a determination of when the sale occurs.

Since you have provided us only limited information, I have been able to provide you only some general information that I hope will be helpful. Without a complete description of the transactions in question, I am unable to provide you information specific to your circumstances. If you have further questions on this subject, please write again, and describe with specificity the transactions in question and include copies of relevant contracts.

Sincerely,

David H. Levine
Supervising Tax Counsel

DHL/cmm

cc: Fresno District Administrator (DH)