Memorandum

To: San Francisco - Auditing (LC:REP)   Date: December 29, 1966

From: Tax Counsel (EHS) - Headquarters

Subject:

 The invoices enclosed with your memorandum of December 23, 1966, indicate that the sales tax has been objected to on grounds not resulting in sales tax exemption. For example, one invoice simply notes "Non Profit," another says "No Sales Tax--Government," another invoice notes "Federal Grant."

 Sales to a governmental agency are taxable unless the sale is to the United States or an instrumentality of the United States. Sales to other governmental agencies are taxable even though the purchase price is paid from funds supplied by federal grants. The Economic Opportunity Council of San Francisco is not an instrumentality of the United States, nor a corporation wholly owned by the United State within the meaning of § 6381, which exempts sales to United States Government instrumentalities. The fact that federal funds may be used is immaterial.

 We enclose a copy of a letter we wrote under date of June 17, 1966, to Mr REDACTED TEXT, Chief, Migrant Programs, Office of Economic Opportunity. In this letter we said:

> "The fact that federal grants are used to purchase the property does not result in sales tax exemption. This problem has been considered at some length, and there is enclosed a copy of Opinion of Attorney General MS4717 which reviews the problem, reaches the conclusion that the sales tax is applicable, and cites an opinion of the Comptroller General of the United States authorizing the inclusion in federal grants of the amount of sales tax applicable to sales to state agencies making the purchases with federal funds."

 This letter appears equally applicable to the transactions concerning which you have made inquiry.

 The only other claimed ground of exemption, i.e., that the purchaser is nonprofit is, of course, no basis for sales tax exemption, there being no such exemption provided for in the Sales and Use Tax Law.

EHS:fb