

**STATE BOARD OF EQUALIZATION**

LEGAL DIVISION - MIC 82
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

Telephone No.: (916) 324-3828

Fax No: (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

BRAD SHERMAN
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

BURTON W. OLIVER
Executive Director

January 19, 1996

Mr. [B]

[H]

XXXX --- ---, Suite XXX

--- ---, California XXXXX

RE: [No Permit Number]
Local Use Tax

Dear Mr. [B]:

I have received your letter dated January 10, 1995, which you faxed to me on that date, asking about the local tax consequences of a project for improvement to realty occurring within the City of [C]. You describe the operation of the project as follows:

“A California county created a nonprofit public benefit corporation to build a regional medical center. The center is being built inside a city within the boundaries of the county in question. Multi-million dollar purchases of equipment from out-of-state vendors are being made by the county. The vendor delivers the equipment to the job site, where it is put to its first functional use.”

You indicated over the phone that the project is located in the City of [C] in --- County. We assume by “equipment” you mean the materials, fixtures, machinery and equipment (as defined in Regulation 1521(a)) used to build the medical center, and not the medical equipment that will be installed in the building later in order to enable it to operate as a hospital. We also assume that the equipment in question was purchased from the out-of-state vendors without the participation of any in-state offices any of those vendors may have. In our telephone conversation that day, you stated that the installing contractor never obtains title to the property. Finally, we assume that the county itself is constructing the building and is not purchasing the equipment for resale to the public nonprofit corporation for construction of the building.

OPINION

Under the facts stated above, the contractor building the medical center is using customer-furnished property. As a result, this project is not a construction contract for sales and use tax purposes. (Reg. 1521(a)(1) & (b)(2).) Rather, it provides for the purchase of tangible personal property by the county for use in California, and so is a straightforward use tax transaction. (Rev. & Tax. Code § 6201.) As the equipment at issue is delivered directly to the jobsite in the City of [C], the first functional use appears to occur there. Therefore, [C]'s local use tax ordinance applies to this transaction.

Currently the county does not have a subpermit for the jobsite. As a result, the local use tax generated by these purchases is distributed to the City of [C] through the medium of the countywide pool. As the equipment is delivered directly to the jobsite, it would be appropriate for the county to take out a subpermit for the site to provide for direct distribution to the city.

In the 1993-94 fiscal year, approximately \$114.7 million in local tax revenues was distributed to the cities in and unincorporated area of --- County. At this time, about 6.5% of the revenue going into the countywide pool goes to --- County, and about 3.6% goes to the City of [C]. If the county does take out a subpermit, the city will get all of the local use tax generated by this project, and the county will get none. The amount of money in the countywide pool will shrink, but the city will get a larger share due to the increased direct distribution. Correspondingly, the shares of the county and the other cities will be reduced. Both city and county will be liable for the higher administrative costs involved. (Rev. & Tax. Code § 7204.3.)

I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Senior Staff Counsel

JLW:sr