



STATE BOARD OF EQUALIZATION

March 9, 1970

Gentlemen:

In your letter of February 25, 1970 you request information concerning the application of the transactions and use tax imposed by BART. For your information, we enclose copies of regulations 1821 through 1827 which have been adopted by the Board to implement and interpret that tax. The Legislature has enacted a bill affecting the requirement for the collection of use tax by retailers engaged in business in the district. Regulations 821, 1823 and 1827 will be amended to reflect this change. Copies of these may be obtained at the end of the month from our district office in Santa Rosa.

When the state tax rate was increased from 3 percent to 4 percent in 1967, Section 6376 was added to the Sales and Use Tax Law granting a partial exemption from state tax of the sale and use of materials and fixtures obligated pursuant to a construction contract entered into prior to the rate increase.

Section 6376 is not incorporated into the BART transactions (sales) and use tax. Instead there are the exemptions explained in Regulations 1823 paragraphs (a)(2)(C); (b)(2)(D); and (d).

The questions which you ask and our answers are as follows:

Question: "1. Is any particular form of certification required when we buy materials in or out of the county for use on various projects in or out of the counties for projects presently contracted for?"

Answer: The BART District transactions (sales) and use tax applies with respect to sales and purchases occurring on and after April 1, 1970. The transactions (sales) tax applies to sales in the district. The use tax applies to the storage, use or other consumption of property in the district. The fact that you may have entered into a construction contract prior to April 1, 1970 does not necessarily affect the application of tax to the sale or use of materials in performing that contract. The application of tax is explained generally in Regulation 1821 and more specifically in Regulation 1823.

With respect to materials used in the performance of a construction contract, tax will apply with respect to all materials purchased and used on or after April 1, 1970, except

(a) the transactions (sales) tax will not apply if the seller of the materials to you is obligated to furnish the property for a fixed price pursuant to a contract entered into by you and the seller prior to April 1, 1970;

(b) the use of materials will be subject to tax unless you are obligated to purchase the property for a fixed price pursuant to a contract entered into prior to April 1, 1970. This is explained in Regulation 1823, paragraphs (a)(2)(C); (b)(2)(D); (d) and (e).

Under Ruling 11, copy of which is enclosed, and Regulation 1826, you are regarded as the retailer of fixtures which you furnish and install on or after April 1, 1970, within the district would be subject to the district transactions (sales) tax or use tax except those fixtures furnished and installed under a fixed price contract entered into prior to April 1, 1970, which meets the conditions set forth in the portions of Regulation 1823 referred to above.

Question: "2. For projects that are not exempt, and on which we are presently bidding, is the tax applicable on the following:

"a. On materials bought in the three counties for use on projects outside the three counties."

Answer: If the materials are purchased in the BART District for use outside the three counties and are shipped pursuant to the contract of sale to a point outside the district the BART tax does not apply. (See paragraph (a)(2)(B) of Regulation 1823.) On the other hand, if the materials are purchased in the district and are delivered to you in the district, the BART transactions (sales) tax applies.

Question: "b. For materials bought outside the three counties for use on projects inside the three counties."

Answer: If materials are purchased outside the BART District on or after April 1, 1970 and brought into the district for use there, you would be required to report and pay district use tax unless the tax was collected from you by the person from whom you purchased the materials.

If you have any further questions, please feel free to write to us.

Very truly yours,

John H. Murray
Tax Counsel

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