

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

*In the Matter of the Petition for Redetermination and the Claims for Refund of
NATIONAL STEEL AND SHIPBUILDING COMPANY under the Sales and Use Tax
Law*

Appearances:

For Petitioner: Mr. Lane L. McVey
Attorney
James B. Euphrat
Tax Manager
Gail H. Morse
Attorney

*For Sales and Use
Tax Department:* Mr. Gary J. Jugum
Assistant Chief Counsel
Ms. Janice Thurston
Senior Tax Counsel

For Appeals Section: Ms. Susan M. Wengel
Senior Tax Counsel

MEMORANDUM OPINION

This opinion considers the merits of the petition for redetermination and the claims for refund under the Sales and Use Tax Law for the periods January 1, 1992 through June 30, 1995 (-010); January 1, 1985 through June 30, 1991 (-001); and January 1, 1992 through June 30, 1995 (-006). Petitioner/claimant, corporation, is an operational shipyard in San Diego, California which builds, converts and repair ships for the United States Navy. Its contracts with the U. S. Navy are fixed-price contracts and contain the Payments clause of Department of Defense Federal Acquisition Regulation Supplement (DFARS) 252.217-7106 which has now been renumbered to DFARS 252.217-7007. Subdivision (f) of this clause provides that:

“all materials, equipment, or any other property or work in process covered by the progress payments made by the Government, upon the making of those progress payments, shall become the sole property of the Government, and are subject to the provisions of the Title clause of the Master Agreement.”

The Title clause referred to in the above section is found in DFARS 252.217-7006, formerly numbered as DFARS 252.217-7105. This provision states that:

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of a job order shall vest in the government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the job order, or with the approval of the Contracting Officer during performance of the job order, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor unless the Government has reimbursed the Contractor of the cost of the materials and equipment.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

The issue presented in this petition and related claims for refund is whether, when read together, these two sections pass title of overhead materials to the U. S. Navy upon receipt of a progress payment. Petitioner/claimant's overhead materials consist of nuts, bolts, paint and office supplies.

The Sales and Use Tax Department has taken the position that DFARS 252.217-7006 is limited to materials and equipment that are actually incorporated in or placed upon the vessel.

OPINION

We conclude that when petitioner/claimant is reimbursed by the government for an item including overhead materials, the government retains title to that item. The progress payments made to petitioner/claimant under DFARS 252.217-7007 include costs for both direct and overhead materials which are to be used in repairing a ship. Consequently, the two DFARS clauses apply to overhead materials and title to these overhead materials passes on payment of the progress payments. See *Aerospace Corporation v. State Board of Equalization* (1990) 218 Cal.App.3d 1300.

We thus conclude that the petition for redetermination and the claims for refund should be granted.

Done at Sacramento, California, this 19th day of November, 1999.

Dean F. Andal, Member
Claude Parrish, Member
John Chiang, Member
Marcy Jo Mandel, Member*

* For Kathleen Connell, per Government Code section 7.9.