STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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Executive Director

August 5, 1996

Mr. J--- P. C---
--- --- & Co., ---
Suite XXXX
--- --- ---
---, NC XXXXX-XXXX

Re: Unidentified Taxpayer;
Uninterruptible Power Systems

Dear Mr. C---:

Your July 11, 1996 letter to Mr. Jerry Cornelius was referred to the Legal Division for a response. You request reconsideration of this Agency's March 27, 1996 response to your request for a "Private Letter Ruling" on how tax applies to your client's sales of uninterruptible power systems ("UPS"). We reiterate from our previous correspondence that the Board staff does not issue rulings. Revenue and Taxation Code section 6596 sets forth the circumstances under which a taxpayer may be relieved of liability for taxes when reasonably relying on a written response to a written request for an opinion. This letter does not come within section 6596 because you have not identified your client in either of your letters to this Agency. You should provide us with the identity of your client (as well as all relevant facts involving the transaction) in any future correspondence with this Agency.

We understand that your client manufactures and installs UPS which provide continuous electrical power to "critical equipment or machinery" at facilities operated and maintained by the United States government. This Agency previously opined that these UPS were fixtures within the meaning of Regulation 1521(a)(5) and that your client was the consumer of these UPS since it is a United States construction contractor. (See Reg. 1521(b)(1)(A).) You now contend that the UPS are not fixtures since the United States government is responsible for installation of all embedded conduit and related wiring, and that the UPS are "not essential" to the United States facility.

Upon further review, we agree with the conclusions set forth in Mr. Cornelius' March 28, 1996 letter finding that the UPS are fixtures within the meaning of Regulation 1521. The UPS do not lose their identity as accessories to the building whether or not the United State government is responsible for installation of the embedded conduit and wiring. The UPS are also essential to the fixed works since they provide continuous electrical power to critical machinery and equipment. We further note that a California Court of Appeal previously regarded UPS as fixtures under circumstances very similar to that of your client's. (See *Overhead Electric Co. v. State Bd. of Equalization* (1991) 227 Cal.App.3d 1230.) We therefore continue to regard your client as the consumer of the UPS installed at the United States' facilities.

If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:rz

cc: Out-of-State District Administrator - (OH)
Mr. Jerry W. Cornelius (MIC: 40)
Mr. Mike Hilbert (MIC: 40)