STATE OF CALIFORNIA

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April 24, 1997

Mr. P--- M---
B--- M--- I---, Inc.
XXXX --- Street
P. O. Box X
---, WA XXXXX

RE: SS -- XX-XXXXXX
Monterey County Tax Rate

Dear Mr. M---:

I am responding to your letter to the Legal Division dated March 7, 1997. You indicate that B--- M--- I--- ("B--- M---") signed a lump-sum supply contract on September 25, 1995, with a customer to supply materials to be used on the City of Monterey Marina. You did not issue a billing until March of 1996, when you billed tax at the "rollback" rate of 6.5%. You do not say, but we assume that you reported tax at the full rate of 7.25% and took a credit on your return of 0.75% for an effective rate of 6.5%. Subsequent billings were at the full legal rate, but the customer has refused to pay at that rate, stating that the correct rate is 6.5%. You ask for a ruling as to the correct rate. We note that the Board staff cannot issue tax rulings; only the Board itself may do that. We can, however, give you our opinion regarding the correct application of tax to a given set of facts.

OPINION

In 1993, SB 263 was enacted to provide for a program of tax credits in order to provide an effective refund of the San Diego County Justice Facilities Financing Agency (SDJF) tax. (Rev & Tax. Code § 7276. Unless otherwise stated, all statutory citations are to the Revenue and Taxation Code.) Under that program, the legal tax rate in Monterey County remained at 7.25%, but, for a period of time, taxpayers there could take a credit of 0.75% against their tax liability, for an effective rate of 6.5%. That tax credit program ended March 31, 1996. SB 263 did not, however, provide for a fixed-price contract exemption from the end of the tax credit program. Therefore, even though a sale is pursuant to a contract that meets the definition of a "fixed-price contract" under Section 6376.1, it is subject to the full legal tax rate of 7.25% if it takes place after April 1, 1996.

We had, however, determined that if the goods to be sold were specifically identified by the seller and buyer as the goods to be delivered to the buyer and the buyer had paid for the goods in cash or purchased the goods on a credit basis prior to April 1, 1996, the "rollback" rate would apply even if they were not delivered to the purchaser until after March 31. Goods are specifically identified to a contract when they already exist and are shipped, invoiced, billed, marked, or otherwise designated by the seller as goods to which the contract refers. (Cal. U. Comm. § 2501(1).)

The effective rate of 7.0% applies to the following situations:

1. The goods are specifically identified to the contract and fully paid for;

2. The goods are specifically identified to the contract and the contract provides that the buyer will pay for the goods on an installment or other credit basis;

3. The goods are sold on layaway.

Most retail sales of goods probably fall into one of these three categories. Where the goods were not identified to the contract until after March 31, however, the tax rate when delivered applies. Such sales must be reported at the full legal rate of 7.25%.

From the fact that B--- M--- is located in the State of Washington, we assume that you have been collecting use tax on this contract. The facts you give indicate that the goods were billed when they were shipped, and payment was due within a given period after shipment. Full payment was likely not made up front. If these conclusions are correct, then only the first billing was qualified to be billed at the effective rate of 6.5%. You appear to have been correct in billing use tax on subsequent shipments at the full legal rate of 7.25%.

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

cc: Out-of-State District Administrator- OH
Mr. David H. Levine