

815.0000 CONSTRUCTION CONTRACTORS—Regulation 1826

815.0009 Delivery of Construction Materials to Location Outside of Special Tax District. A construction contractor is directed by its customer to deliver certain equipment which the customer is purchasing to a location outside of the special tax district in which the job is located. The contractor is aware that the equipment will be used in the special tax district and it is engaged in business in that district. The contractor is required to collect the district use tax from the buyer even if installation of the equipment is not required. 1/26/95.

815.0010 Factory-Built Housing and Mobile Homes. Special rules apply to the sale and use of factory-built school buildings, factory-built housing, and mobile homes used as residences. The purchaser/dealers of these items are liable for the district use tax. Also by virtue of making regular deliveries into the purchaser's districts, the dealers are engaged in business in those districts. As a result, the purchaser/dealers are required to collect the district use tax at the rate in effect in the districts into which the purchaser/dealers deliver and/or install these structures. 4/12/93.

815.0011 Fixed Price Contracts. When dealing with the earthquake tax, if the prime contract qualifies as a fixed price contract, the subcontract also qualifies. However, this rule does not apply to the exemption for fixed price contracts under district taxes. In that case, each contract must qualify on its own. 7/10/91.

815.0020 Property Obligated Under Contract Prior to Effective Date of Ordinance. Section 6376 of the Sales and Use Tax Law which grants a partial exemption from state tax of the sale or use of materials and fixtures obligated pursuant to a construction contract entered into prior to August 1, 1967, is not incorporated into the transaction (sales) and use taxes.

With respect to materials purchased and used on or after April 1, 1970, within the BART district, the tax will apply except:

- (a) the transactions (sales) tax will not apply if the seller of the materials is obligated to furnish the property to the buyer for a fixed price pursuant to a contract entered into prior to April 1, 1970;
- (b) the use of materials will be subject to tax unless the contractor is 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).

With respect to fixtures which are furnished and installed on and after April 1, 1970, within the district, the district transactions sales tax or use tax applies except with respect to those fixtures furnished and installed under a fixed price contract entered into prior to April 1, 1970, which meets the conditions referred to in the portions of Regulation 1823 referred to above. 3/9/70.

815.0500 Sales Tax Reimbursement Under Lump Sum Contracts. A person who contracts with a property owner to furnish and install a fixture is the retailer of that fixture. The fact that the contract is for a lump sum does not automatically mean that the person did not actually collect sales tax reimbursement from the property owner either by separate statement or through a specific tax included price. Therefore, in this case of refunds due from the San Diego Justice Facilities Financing Agency (SDJF), the question of whether sales tax reimbursement was obtained must be answered before it can be determined whether the contractor or the consumer must file a refund claim under the statutory scheme provided for in refunding SDJF taxes. 8/8/94.

815.0600 Tax Rate Changes. Grandfather exemptions from tax increases exist for the following three different tax increases: (1) the $\frac{1}{4}$ % tax increase (earthquake tax), (2) the $\frac{1}{2}$ % OCTA and LATC tax increases, and (3) the $1\frac{1}{4}$ % state tax increase effective July 15, 1991. Each of these tax increases are covered by a specific and separate "grandfather clause" which exempts certain transactions entered into prior to the operative dates from the tax increase. Each of these laws stands alone, and each is slightly different as it relates to fixed price construction contracts. A clarification of the "grandfather clause" for each of three tax increases as they relate to fixed price construction contracts follows:

(1) ¼% Earthquake Tax

The “grandfather clause” covering the tax rate increase for the ¼% (earthquake tax) exempts from that increase fixtures, materials, and supplies obligated pursuant to a fixed price construction contract entered into prior to November 7, 1989.

(2) Transactions Taxes in General (½% OCTA, LATC, etc.)

The “grandfather clause” covering the tax rate increase for OCTA, LATC, as well as other district taxes exempts from that increase fixed price contracts. This includes fixtures obligated pursuant to a fixed price construction contract entered into prior to the effective date of the increase because construction contractors are retailers of fixtures. The “grandfather clause” relating to the tax increase does not provide an exemption from the increase for materials and supplies purchased pursuant to a fixed price construction contract entered into prior to the effective date of the increase, unless the contractor has entered into a fixed price contract directly with its supplier for these materials and supplies prior to the effective date of the tax increase.

(3) 1¼% State Tax Increase

The “grandfather clause” covering the tax rate increase for the 1¼% state tax increase exempts from that increase materials and fixtures obligated pursuant to a fixed price construction contract entered into prior to July 15, 1991. The “grandfather clause” relating to this tax increase does not provide an exemption from the increase for supplies purchased pursuant to a fixed price construction contract entered into prior to the effective date of the increase, unless the contractor has entered a fixed price contract directly with its supplier for these supplies prior to the effective date of the tax increase. 9/11/92; 5/20/96.