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March 4, 1994

Attn:

Re: Aerospace Corp. v. SBE, 218 Cal. App. 3d 1300 (1990)

Dear Mr.

In your letter of December 9, 1993 you requested our opinion on the taxability of certain personal property held by the Santa Barbara Research Center (SBRC). You are not overly concerned with their expendable supplies; however, you are concerned with possible exemption of small equipment such as tables, chairs, desks and file cabinets. This personalty was acquired by SBRC pursuant to federal government contracts containing "standard contract clauses" which state that title to property acquired for use in fulfilling the contract shall vest in the United States and upon completion title to property not delivered to the Government shall vest in the Contractor (CBRC). It is your conclusion that "the United States Government has an equity title only for the purpose of protecting its interest in the contract; there is no intent nor has there ever been for the Government to enter into a contract for the purpose of acquiring expendable equipment".

As you are aware, the referenced case dealt primarily with "overhead materials" most of which were consumed in the performance of the contract. A definition and partial listing of these materials is found in footnote 1 at the bottom of page 1304 of the reported decision. In this decision the court strictly applied the title clauses of the government contracts and held that the acquisition and consumption of the overhead materials

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was exempt from the sales tax as property owned by the federal government. This case differs from yours in that the personalty is not consumed and that the title transfers to CBRC upon contract completion. Here, we agree that Aerospace would not be controlling. Nevertheless, at 218 Cal. App. 1309 and 1310 the court states:

However, where the federal government receives title to property pursuant to the provisions of its contract with a civilian contractor, any use of the property made by the contractor in performing the contract is deemed to have been made on behalf of the government and such use therefore is not taxable.

This language apparently is directly on point and derived from the court's prior holding in *Lockheed Aircraft Corp. v. State Bd. of Equalization* (1978) 81 Cal. App. 3d 257 at pages 265 and 266. Here the property in question was special test equipment and special tooling that was either acquired or constructed by the contractor specifically for use in carrying out the contract. The title clause provided that upon acquisition or construction title would vest in the United States and so remain throughout the duration of the contract. Unlike your situation at contract completion, ownership did not transfer to the contractor. In *Lockheed* the contract provided for disposition of the property and none of the equipment was purchased by the taxpayers or used by them for research and development or any other commercial application. Some was sold and the remainder used pursuant to new federal contracts. Like *Aerospace* this case involved the application of the California Sales and Use Tax Law and did not construe property tax application.

Our research has not uncovered any property tax case that directly matches the facts of your appeal. In *Mayhew Tec Center v. Co. of Sacramento* (1992) 4 Cal. App. 4th 497 a different court of appeal ruled that despite recitals in the contract that title remained in the developer, the state was the true owner of the property and as such it was exempt from property tax. See our Letter to County Assessors, No. 94/10 of February 14, 1994. In contrast *General Dynamics Corp. v. County of L.A.* (1958) 51 Cal. 2d 59 was a holding by the state supreme court that there was no taxable possessory interest in personal property. We would recommend that you review these cases with your county counsel for legal propositions that might support your decision. Since you are located in the appellate district that decided *Lockheed*

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and Aerospace, we feel that you would be fighting an uphill battle. Perhaps it may be better to limit your assessment to the time the contract concludes and title shifts to CBRC.

Very truly yours,

JMW:jd
precednt/govnprop/94001.jmw

cc: