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Research Administration Office

# Memo

## Operating Guidance

No. 92- 22  
October 13, 1992

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VICE CHANCELLORS—BUSINESS AND FINANCE ADMINISTRATION\*  
CONTRACT AND GRANT OFFICERS  
OFFICE OF THE PRESIDENT FUNCTIONAL MANAGERS

**Subject:** NASA Correspondence Regarding California Sales Tax Refunds Under Aerospace Corp. v. State Board of Equalization, 218 Cal. App. 3d 1300, 267 Cal. Rptr. 685 (1990)

Campuses have recently received correspondence from NASA field offices regarding the referenced California Court of Appeals case. The NASA letters imply that, as a result of the Aerospace decision, the University may be able to obtain a refund of tax on equipment and supplies whenever the cost of such materials is allocated to the Government as an indirect cost.

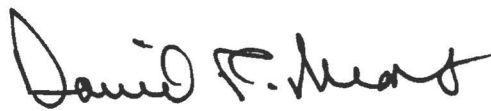
The Research Administration Office has reviewed University policies and procedures regarding the application of sales and use tax in light of the Aerospace decision, NASA and other federal regulations, and the California Revenue and Taxation Code. Our conclusion is that the University in all likelihood cannot obtain a refund of sales tax on any property in our indirect cost pools.

Attached is a copy of a letter outlining the University's position, which has been sent on behalf of all campuses to NASA Headquarters, Kennedy Space Center, Johnson Space Center and Marshall Space Flight Center. Also attached is a similar response sent to the Jet Propulsion Laboratory. The attached letters may be duplicated as needed for campus responses under individual awards.

As the vesting of title is critical to determining whether tax is due, it is advisable to review the title clause of the specific awards referenced in incoming NASA correspondence. If you become aware of erroneous payments of sales tax on Government-owned property, or any awards to the University by which the Government takes title to property partially reimbursed through indirect costs, please bring the agreements to our attention for appropriate resolution.

Refer: Robert C. Baum  
(510) 987-9844

Subject Index: 08, 16  
Organization Index: F-650



David F. Mears  
Director  
Research Administration Office

cc: University Counsel Portwood

\*Note: The addressees above represent the standard distribution of Contract and Grant Memos. Additional addressees, if any, may be added based on the subject of the Memo. See cc's.

# UNIVERSITY OF CALIFORNIA

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RONALD W. BRADY  
Senior Vice President—  
Administration

OFFICE OF THE PRESIDENT  
300 LAKESIDE DRIVE  
OAKLAND, CALIFORNIA 94612-3550

October 9, 1992

Mr. Thomas Luedtke  
Director, Contract Pricing and Finance Division  
NASA Headquarters  
Washington, DC 20546

SUBJECT: California Sales Tax Refunds Under Aerospace Corp. v. State Board of Equalization, 218 Cal. App. 3d 1300, 267 Cal. Rptr. 685 (1990)

Dear Mr. Luedtke:

Several NASA contract and grant offices have recently requested the University of California to assess the impact of the referenced California Court of Appeals decision on our organization. Copies of this response are being sent to the Kennedy Space Center, Johnson Space Center and Marshall Space Flight Center, on behalf of all nine campuses of the University.

The University has reviewed our policies and procedures regarding the application of sales and use tax in light of the Aerospace case, NASA and other federal guidance, and the California Revenue and Taxation Code. The following are the findings of our review.

First, in accordance with established University policy, it has been and remains our practice to pay sales tax on purchases of tangible personal property to which the University takes title, and not to pay sales tax on purchases of property to which the United States Government takes title. We believe this policy is consistent with the Aerospace case and California tax law generally.

Second, under the rule of Aerospace, title to property purchased for the performance of federal awards -- and hence the tax treatment of such property -- is determined by the title provisions of the awards. For property purchased under NASA grants and cooperative agreements, the relevant provisions are Paragraphs 408 and 505 of the NASA Grant and Cooperative Agreement Handbook. For property purchased under NASA contracts with the University, the relevant provision is FAR 52.245-5, Alternate I. The general rule in both cases is that title to purchased property vests in the University, unless the award specifies particular items of property to which the Government takes title. There have been instances of the Government taking title to property charged directly, and in such instances the University pays no sales tax at the time of purchase. However, we know of no award from NASA, or any other federal agency, in which title to items reimbursed through indirect costs vests in the Government.

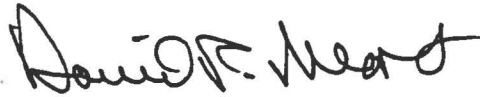
Mr. Luedtke  
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Our conclusion is that there is no opportunity for the University to obtain a tax refund on University-owned equipment and supplies, even if part of the cost of such items may have been allocated to federal awards through the University's indirect cost rates. This conclusion finds support in an informal opinion given by John Waid of the California Board of Equalization, Legal Division. Mr. Waid is the official whose legal opinion is prerequisite to our obtaining a refund from the State of California.

I hope the foregoing is responsive to NASA's concerns. If there are questions about the content of this response, I can be reached at (510) 987-9838.

Sincerely,

A handwritten signature in dark ink, appearing to read "David F. Mears", with a stylized flourish at the end.

David F. Mears  
Director

cc: Contract Pricing Division Head Sam Lenck (NASA/KSC)  
Contracting Officer Margaret F. Henry (NASA/JSC)  
Contracting Officer K.D. Sowell (NASA/MSFC)

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OFFICE OF THE PRESIDENT  
300 LAKESIDE DRIVE  
OAKLAND, CALIFORNIA 94612-3550

October 13, 1992

Ms. Martha Moldowitch  
Associate Contract Negotiator  
Jet Propulsion Laboratory, M/S 201-205  
California Institute of Technology  
4800 Oak Grove Drive  
Pasadena, CA 91108-8090

SUBJECT: California Sales Tax Refunds Under Aerospace Corp. v. State Board of Equalization, 218 Cal. App. 3d 1300, 267 Cal. Rptr. 685 (1990)

Dear Ms. Moldowitch:

This is in response to your request that the University of California assess the impact of the referenced Court of Appeals decision on our contracts with the Jet Propulsion Laboratory. This reply is sent on behalf of all University of California campuses for all awards from JPL.

The University has reviewed our policies and procedures regarding the application of sales and use tax in light of the Aerospace case, NASA and other federal guidance, and the California Revenue and Taxation Code. The following are the findings of our review.

First, in accordance with established University policy, it has been and remains our practice to pay sales tax on purchases of tangible personal property to which the University takes title, and not to pay sales tax on purchases of property to which the United States Government takes title. We believe this policy is consistent with the Aerospace case and California tax law generally.

Second, under the rule of Aerospace, title to property purchased for the performance of federal awards -- and hence the tax treatment of such property -- is determined by the title provisions of the awards. For property purchased under JPL contracts with the University, the relevant provision is Article GP-40, Government Property. The general rule in both cases is that title to purchased property vests in the University, unless the contract specifies particular items of property to which the Government takes title. There are awards under which the Government takes title to property charged directly, and in such instances the University pays no sales tax at the time of purchase. However, we know of no award from JPL, NASA, or any other federal agency, in which title to items reimbursed through indirect costs vests in the Government.

Ms. Moldowitch  
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October 13, 1992

Our conclusion is that there is no opportunity for the University to obtain a tax refund on University-owned equipment and supplies, even if part of the cost of such items may have been allocated to federal and/or JPL awards through the University's indirect cost rates. This conclusion finds support in an informal opinion given by John Waid of the California Board of Equalization, Legal Division. Mr. Waid is the official whose legal opinion is prerequisite to our obtaining a refund from the State of California.

I hope the foregoing is responsive to JPL's concerns. If there are questions about the content of this response, please contact Robert Baum at (510) 987-9844.

Sincerely,

A handwritten signature in black ink, appearing to read "David F. Mears", with a stylized flourish at the end.

David F. Mears  
Director