



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

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**April 13, 2007**

**To Interested Parties:**

**Notice of Proposed Regulatory Action  
By the  
State Board of Equalization**

**Proposed to Adopt Sales and Use Tax Regulation 1521  
*Construction Contractors***

**Notice Is Hereby Given**

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposes to promulgate amendments to Regulation 1521, *Construction Contractors*, regarding the classification of solar cells, solar panels, and solar modules as materials or fixtures, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on June 1, 2007. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by June 1, 2007.

**Informative Digest/Policy Statement Overview**

Regulation 1521, *Construction Contractors*, is proposed to be amended to provide that photovoltaic cells, solar panels, and solar modules should be considered materials when they function in the same manner as other materials such as roofing shingles, skylights, wall panels or windows, but that other photovoltaic cells, solar panels, and solar modules are accessory to a building and should be considered fixtures.

**Cost To Local Agencies And School Districts**

The State Board of Equalization has determined that the proposed regulation does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed regulation will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

### **Effect On Business**

Pursuant to Government Code section 11346.5(a)(7), the Board of Equalization makes an initial determination that the adoption of Proposed Regulation 1521 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

### **Cost Impact On Private Person Or Businesses**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **Significant Effect On Housing Costs**

No significant effect.

### **Federal Regulations**

Proposed Regulation 1521 has no comparable federal regulations.

### **Authority**

Section 7051 Revenue and Taxation Code.

### **Reference**

Sections 6009, 6012, 6015 and 6016, Revenue and Taxation Code.

### **Contact**

Questions regarding the substance of the proposed regulation should be directed to Ms. Lisa Andrews (916) 322-5989, at 450 N Street, Sacramento, CA 95814, e-mail [Lisa.Andrews@boe.ca.gov](mailto:Lisa.Andrews@boe.ca.gov) or by mail at State Board of Equalization, Attn: Lisa Andrews, MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail [Diane.Olson@boe.ca.gov](mailto:Diane.Olson@boe.ca.gov) or Ms. Joann Richmond, Property Tax Appeals Analyst, telephone (916) 322-1931, fax (916) 324-3984, e-mail [Joann.Richmond@boe.ca.gov](mailto:Joann.Richmond@boe.ca.gov) or by mail at State Board of Equalization, Attn: Diane Olson or Joann Richmond, MIC:80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

### **Alternatives Considered**

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

### **Availability Of Initial Statement Of Reasons And Text Of Proposed Regulation**

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

### **Availability Of Final Statement Of Reasons**

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It also will be available for your inspection at 450 N Street, Sacramento, California.

### **Additional Comments**

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

Sincerely,

  
Gary Evans, Acting Chief  
Board Proceedings Division

GE:dgo

Enclosures

**Proposed Amendments to Regulation 1521**

**Regulation 1521. CONSTRUCTION CONTRACTORS.**

**(a) DEFINITIONS.**

*Reference:* Sections 6006 - 6010, 6012, 6012.2., 6012.6, 6012.8, 6012.9, 6015, 6016, 6016.3, 6016.5, 6055, 6091-6095, 6203.5, 6241-6246, 6276, 6276.1, 6379, 6384, 6386, 6421, 6901.5, Revenue and Taxation Code.

**(1) CONSTRUCTION CONTRACT.**

**(A)** "Construction contract" means and includes a contract, whether on a lump sum, time and material, cost plus, or other basis, to:

1. Erect, construct, alter, or repair any building or other structure, project, development, or other improvement on or to real property, or
2. Erect, construct, alter, or repair any fixed works such as waterways and hydroelectric plants, steam and atomic electric generating plants, electrical transmission and distribution lines, telephone and telegraph lines, railroads, highways, airports, sewers and sewage disposal plants and systems, waterworks and water distribution systems, gas transmission and distribution systems, pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, refineries and chemical plants, or
3. Pave surfaces separately or in connection with any of the above works or projects, or
4. Furnish and install the property becoming a part of a central heating, air-conditioning, or electrical system of a building or other structure, and furnish and install wires, ducts, pipes, vents, and other conduit imbedded in or securely affixed to the land or a structure thereon.

**(B)** "Construction contract" does not include:

1. A contract for the sale or for the sale and installation of tangible personal property such as machinery and equipment, or
2. The furnishing of tangible personal property under what is otherwise a construction contract if the person furnishing the property is not responsible under the construction contract for the final affixation or installation of the property furnished.

**(2) CONSTRUCTION CONTRACTOR.** "Construction contractor" means any person who for himself or herself, in conjunction with, or by or through others, agrees to perform and does perform a construction contract. "Construction contractor" includes subcontractors and specialty contractors and those engaged in such building trades as carpentry, bricklaying, cement work, steel work, plastering, drywall installation, sheet metal work, roofing, tile and terrazzo work, electrical work, plumbing, heating, air-conditioning, elevator installation and construction, painting, and persons installing floor coverings, including linoleum, floor tile, and wall-to-wall carpeting, by permanently affixing such coverings to a floor. "Construction contractor" includes any person required to be licensed under the California Contractors' State License Law (Business & Professions Code Sections 7000 et seq.), and any person contracting with the United States to perform a construction contract, whether such persons are formed or organized under the laws of this state, or another state or country.

**(3) UNITED STATES CONSTRUCTION CONTRACTOR.** "United States construction contractor" means a construction contractor who for himself or herself, in conjunction with, or by or through others, agrees to perform and does perform a construction contract for the United States Government.

**(4) MATERIALS.** "Materials" means and includes construction materials and components, and other tangible personal property incorporated into, attached to, or affixed to, real property by contractors in the performance of a construction contract and which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of the real property. A list of typical items regarded as materials is set forth in Appendix A.

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## Proposed Amendments to Regulation 1521

(5) **FIXTURES.** "Fixtures" means and includes items which are accessory to a building or other structure and do not lose their identity as accessories when installed. A list of typical items regarded as fixtures is set forth in Appendix B.

(6) **MACHINERY AND EQUIPMENT.** "Machinery and equipment" means and includes property intended to be used in the production, manufacturing or processing of tangible personal property, the performance of services or for other purposes (e.g., research, testing, experimentation) not essential to the fixed works, building, or structure itself, but which property incidentally may, on account of its nature, be attached to the realty without losing its identity as a particular piece of machinery or equipment and, if attached, is readily removable without damage to the unit or to the realty. "Machinery and equipment" does not include junction boxes, switches, conduit and wiring, or valves, pipes, and tubing incorporated into fixed works, buildings, or other structures, whether or not such items are used solely or partially in connection with the operation of machinery and equipment, nor does it include items of tangible personal property such as power shovels, cranes, trucks, and hand or power tools used to perform the construction contract. A list of typical items regarded as machinery and equipment together with a list of typical items not regarded as machinery and equipment is set forth in Appendix C.

(7) **TIME AND MATERIAL CONTRACT.** "Time and material contract" means a contract under which the contractor agrees to furnish and install materials or fixtures, or both, and which sets forth separately a charge for the materials or fixtures and a charge for their installation or fabrication.

(8) **LUMP SUM CONTRACT.** "Lump sum contract" means a contract under which the contractor for a stated lump sum agrees to furnish and install materials or fixtures, or both. A lump sum contract does not become a time and material contract when the amounts attributable to materials, fixtures, labor, or tax are separately stated in the invoice.

### **(b) APPLICATION OF TAX.**

#### **(1) UNITED STATES CONSTRUCTION CONTRACTORS.**

**(A) Materials and Fixtures.** United States construction contractors are consumers of materials and fixtures which they furnish and install in the performance of contracts with the United States Government. Either the sales tax or the use tax applies with respect to sales of tangible personal property (including materials, fixtures, supplies, and equipment) to contractors for use in the performance of such contracts with the United States for the construction of improvements on or to real property in this state. The fact that the contract may provide principally for the manufacture or acquisition of tangible personal property is immaterial. The sales tax, but not the use tax, applies even though the contractor purchases the property as the agent of the United States.

**(B) Machinery and Equipment.** United States contractors are retailers of machinery and equipment furnished in connection with the performance of a construction contract with the United States Government. Tax does not apply to sales of machinery and equipment to United States contractors or subcontractors, provided title to the property passes to the United States before the contractor makes any use of it. Such sales are sales for resale, and the purchasing contractor may issue a resale certificate. A contractor who uses the machinery or equipment before title passes to the United States is the consumer of that machinery or equipment and either sales tax or use tax applies with respect to the sale to or the use by the contractor.

#### **(2) CONSTRUCTION CONTRACTORS OTHER THAN UNITED STATES CONSTRUCTION CONTRACTORS.**

##### **(A) Materials.**

1. **In General.** Construction contractors are consumers of materials which they furnish and install in the performance of construction contracts. Either sales tax or use tax applies with respect to the sale of the materials to or the use of the materials by the construction contractor.

2. **When Contractor is Seller.** A construction contractor may contract to sell materials and also to install the materials sold. If the contract explicitly provides for the transfer of title to the materials prior to the time the materials are installed, and separately states the sale price of the materials, exclusive of the charge for installation, the contractor will be deemed to be the retailer of the materials.

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**Proposed Amendments to Regulation 1521**

In the case of a time and material contract, if the contractor bills his or her customer an amount for "sales tax" computed upon his or her marked up billing for materials, it will be assumed, in the absence of convincing evidence to the contrary, that he or she is the retailer of the materials.

If the sale occurs in this state, the sales tax applies to the contractor's (retailer's) gross receipts from the sale of the materials. If the sale occurs prior to the time the property is brought into this state, the contractor's (retailer's) customer is the consumer and his or her use (unless otherwise exempt) is subject to use tax measured by the sales price. The contractor must collect the use tax and pay it to this state.

**(B) Fixtures.**

1. In General. Construction contractors are retailers of fixtures which they furnish and install in the performance of construction contracts and tax applies to their sales of the fixtures.

2. Measure of Tax.

a. In General. If the contract states the sale price at which the fixture is sold, tax applies to that price. If the contract does not state the sale price of the fixture, the sale price shall be deemed to be the cost price of the fixture to the contractor.

b. Determining Cost Price. If the contractor purchases the fixtures in a completed condition, the cost price is deemed to be the sale price of the fixture to him or her and shall include any manufacturer's excise tax or import duty imposed with respect to the fixture prior to its sale by the contractor.

If the contractor is the manufacturer of the fixture, the cost price is deemed to be the price at which similar fixtures in similar quantities ready for installation are sold by him or her to other contractors.

If similar fixtures are not sold to other contractors ready for installation, then the cost price shall be deemed to be the amount stated in the price lists, bid sheets or other records of the contractor.

If the sale price cannot be established in the above manner and the fixture is manufactured by the contractor, the cost price shall be deemed to be the aggregate of the following:

- [1] Cost of materials, including such items as freight-in and import duties,
- [2] Direct labor, including fringe benefits and payroll taxes,
- [3] Specific factory costs attributable to the fixture,
- [4] Any manufacturer's excise tax,
- [5] Pro rata share of all overhead attributable to the manufacture of the fixture, and
- [6] Reasonable profit from the manufacturing operations which, in the absence of evidence to the contrary, shall be deemed to be 5 percent of the sum of the preceding factors.

Jobsite fabrication labor and its prorated share of manufacturing overhead must be included in the sale price of the fixture. Jobsite fabrication labor includes assembly labor performed prior to attachment of a component or a fixture to a structure or other real property.

3. Exceptions - Leased Fixtures. In some instances the construction contractor may furnish and install a fixture for a person, other than the owner of the realty, who intends to lease the fixture in place as tangible personal property as provided in Section 6016.3 of the Revenue and Taxation Code and pay tax measured by rental receipts.

In this case the construction contractor may take a resale certificate from the lessor at the time of the transaction and the sale to the lessor will be considered to be a sale for resale. The resale certificate should indicate that the fixture is purchased for resale by the purchaser as tangible personal property under Section 6016.3 of the Revenue and Taxation Code.

**(C) Machinery and Equipment.**

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## Proposed Amendments to Regulation 1521

1. In General. Construction contractors are retailers of machinery and equipment even though the machinery and equipment is furnished in connection with a construction contract. Tax applies to the contractor's gross receipts from such sales.

2. Measure of Tax.

a. In General. Tax applies to the gross receipts from the sale of machinery and equipment furnished and installed by a construction contractor. If the contract calls only for the furnishing and installation of machinery and equipment, tax applies to the total contract price less those charges excludible from gross receipts under Section 6012 of the Revenue and Taxation Code.

b. Lump Sum Contracts - Determining Gross Receipts. If the contract is for a lump sum and includes the furnishing and installation of materials, fixtures, and machinery and equipment, the gross receipts from the sale of the machinery and equipment shall be the price at which similar quantities ready for installation are sold at retail delivered in the market area where the installation takes place.

If there is no such retail price for the machinery and equipment, then the gross receipts shall be determined from the contracts, price lists, bid sheets, or other records of the contractor.

If the gross receipts cannot be established in the above manner and the machinery and equipment is manufactured by the contractor, the gross receipts from the sale shall be the aggregate of the following:

- [1] Cost of materials, including such items as freight-in and import duties,
- [2] Direct labor, including fringe benefits and payroll taxes,
- [3] Specific factory costs attributable to the machinery or equipment,
- [4] Any manufacturer's excise tax,
- [5] Pro rata share of all overhead attributable to the machinery or equipment, including overhead attributable to manufacturing, selling, contracting, and administration, and
- [6] Reasonable profit from the manufacture and sale of the machinery or equipment which, in the absence of evidence to the contrary, shall be deemed to be 5 percent of the sum of the preceding factors.

Jobsite fabrication labor and its prorated share of manufacturing overhead must be included in the sale price of the machinery or equipment. Jobsite fabrication labor includes assembly labor performed prior to attachment of a component or the machinery or equipment to a structure or other real property.

**(D) Cost Plus A Fee Contracts.** When a contractor enters into a construction contract for a cost plus a fee or time and materials plus a fee, whether the fee is a lump sum or a percentage of costs, the fee is not included in the measure of tax. When the contractor is the manufacturer of the fixtures or machinery and equipment, the "cost price" of the fixtures and the gross receipts from the sale of the machinery and equipment shall be determined in accordance with (B) and (C) above.

(3) MISCELLANEOUS SALES BY CONTRACTORS. In addition to sales of fixtures and machinery and equipment, tax applies to all retail sales by contractors of tangible personal property, including parts, supplies, tools, construction equipment, buildings severed or to be severed by the contractor, and furniture, including furniture sold with a building, even though the building is sold "in place."

(4) PERMITS. Contractors engaged solely in performing construction contracts which do not involve the sale and installation of fixtures and who do not also engage in business as sellers or retailers are not required to hold seller's permits. However, if a contractor is a seller or retailer because he or she makes sales of fixtures, materials, or machinery and equipment, or other tangible personal property either in connection with or as part of a construction contract, or otherwise, he or she is required to hold a seller's permit.

(5) SUPPLIES AND TOOLS FOR SELF-USE. Contractors are the consumers of supplies such as oxygen, acetylene, gasoline, acid, thread-cutting oil, and tools and parts for tools, which they use in their business, and the tax applies to the sale of such supplies and tools to contractors.

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**Proposed Amendments to Regulation 1521**

**(6) EXEMPTION CERTIFICATES.**

**(A) Resale Certificates.** Contractors holding valid seller's permits may purchase fixtures and machinery and equipment for resale by issuing resale certificates to their suppliers. They may not purchase materials for resale unless they are also in the business of selling materials.

A contractor cannot avoid liability for sales or use tax on materials or fixtures furnished and installed by him or her by taking a resale certificate from the prime contractor, interior decorators, designers, department stores, or others. However, under the circumstances described in subsection (b)(2)(B)3., a contractor may take a resale certificate for fixtures furnished and installed by him or her for a person other than the owner of the realty.

**(B) Exemption Certificates for Out-of-State Use.** Sales tax does not apply to sales of tangible personal property to a construction contractor who holds a valid California seller's permit when the property is used by the contractor outside this state in his or her performance of a contract to improve real property and as a result of such use the property is incorporated into and becomes a part of real property located outside this state. This exemption is available only if at the time of the purchase the contractor certifies in writing to the seller that he or she holds a valid California seller's permit (giving the number of that permit and identifying the property purchased) and states that the property will be used in the manner stated above. The certificate must be signed by the contractor or an authorized employee. Such a certification may appear in the body of a purchase order which bears the signature of the purchaser. Any certificate given subsequent to the time of purchase will not be recognized.

If the property purchased under a certificate is used by the contractor in any other manner or for any other purpose than stated in the certificate, the contractor shall be liable for sales tax as if he or she were a retailer making a retail sale of the property at the time of such use, and the sale price of the property to him or her shall be deemed the gross receipts from the sale.

**(C) Deductions for Tax-Paid Purchases Resold.** A contractor may claim a "tax-paid purchases resold" deduction for any property of which he or she is the retailer when he or she has reimbursed his or her vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the property, and has resold the property prior to making any use of it. In the event that the contractor sells short ends or pieces which are not used other than in severing them from larger units purchased by him or her and as to which he or she has paid sales tax reimbursement or use tax, he or she may claim the deduction for tax-paid purchases resold, but the amount of the deduction shall not exceed the price at which he or she sells such short ends or pieces.

**(c) PARTICULAR APPLICATIONS.**

**(1) DRAPERIES AND DRAPERY HARDWARE.** Persons who contract to sell and install draperies including drapery hardware, such as brackets, rods, tracks, etc., are retailers of the items which they furnish and install. Tax applies to the entire contract price exclusive of the charge for installation which charge should be separately stated. Installers who furnish drapery hardware or other tangible personal property may accept resale certificates from department stores or other sellers to furnish and install the draperies and drapery hardware.

The department stores or other sellers furnishing resale certificates are required to pay the tax to the state upon their selling price of the draperies and drapery hardware, exclusive of installation charges. The installer should segregate his or her installation charge in order that the department store or other seller may properly segregate its charge attributable to installation for purposes of determining its taxable gross receipts.

**(2) PREFABRICATED CABINETS.** A cabinet will be considered to be "prefabricated" and a "fixture" when 90 percent of the total direct cost of labor and material in fabricating and installing the cabinet is incurred prior to affixation to the realty. In determining this 90 percent, the total direct cost of all labor and materials in fabricating the cabinet to the point of installation will be compared to the total direct cost of all labor and materials in completely fabricating and installing the cabinet. If more than one cabinet is fabricated and installed under the contract, each cabinet will be considered separately in determining whether the cabinet is prefabricated.

**(3) PREFABRICATED BUILDINGS.** Prefabricated units such as commercial coaches, house trailers, etc., registered with the Department of Motor Vehicles or the Department of Housing and Community Development, are

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tangible personal property even though they may be connected to plumbing and utilities. A mobilehome which meets or is modified to meet, all applicable building codes and regulations and which is permanently affixed to realty, is an improvement to realty and is not personal property. A contract to furnish and install a prefabricated or modular building similar in size to, but which is not, a factory-built school building (relocatable classroom) is a construction contract whether the building rests in place by its own weight or is physically attached to realty. It is immaterial whether the building is erected upon or affixed to land owned by the owner of the building or is leased to the landowner or lessee of the land.

Generally, a contract to furnish and install a small prefabricated building, such as a shed or kiosk, which is movable as a unit from its site of installation, is a construction contract only if the building is required to be physically attached to real property by the seller, upon a concrete foundation or otherwise. The sale of such a unit to rest in place by its own weight, whether upon the ground, a concrete slab, or sills or piers, is not a construction contract even though the seller may deliver the unit to its site of use.

Prefabricated or modular buildings which are "factory-built housing" where permanently affixed to the realty are improvements to realty. The manufacturer of factory-built housing who contracts to furnish and install the factory-built housing manufactured by him or her is the consumer of the materials used in building and installing the factory-built housing and the retailer of the fixtures. Tax applies as provided in (b) above.

**(4) FACTORY-BUILT SCHOOL BUILDINGS.**

**(A) General.** On and after September 26, 1989, a contract to furnish and install a factory-built school building is not a construction contract but rather is a sale of tangible personal property.

**(B) Definitions.**

1. "Factory-built School Building." The term "factory-built school building" (relocatable classrooms) means and includes:

**Aa.** For the period September 26, 1989 through September 12, 1990, any building designed to be used as a school building as defined in Sections 39214 and 81165 of the Education Code and so used. A factory-built school building must be designed in compliance with state laws for school construction and approved by the structural safety section in the office of the State Architect. It must be wholly or substantially manufactured at an offsite location for the purpose of being assembled, erected, or installed on a schoolsite.

**Bb.** Effective September 13, 1990, any building which is designed or intended for use as a school building and is wholly or substantially manufactured at an offsite location for the purpose of being assembled, erected, or installed on a site owned or leased by a school district or a community college district. A factory-built school building must be designed and manufactured in accordance with building standards adopted and approved pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 of the Health and Safety Code and must be approved by the structural safety section in the office of the State Architect.

The term does not include buildings licensed by either the Department of Motor Vehicles or the Department of Housing and Community Development. The term also does not include prefabricated or modular buildings which are similar in size to, but which are not, "factory-built school buildings". It is immaterial whether the building is erected upon or affixed to land owned by the owner of the building or is leased to the landowner or lessee of the land.

2. "Consumer."

**Aa.** For the period September 26, 1989 through September 12, 1990, the term "consumer" as used herein means either (1) a school or a school district or (2) a contractor who purchases a factory-built school building for the purpose of fulfilling the requirements of an existing contract with a school or school district to furnish and install such building.

**Bb.** Effective September 13, 1990, the term "consumer" as used herein means either (1) a school district or a community college district or (2) a contractor who purchases a factory-built school building for the purpose of

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**Proposed Amendments to Regulation 1521**

fulfilling the requirements of an existing contract with a school district or a community college district to furnish and install such building.

**(C) Place of Sale.** The place of sale or purchase of a factory-built school building is the place of business of the retailer regardless of whether the sale of the building includes installation or whether the building is placed upon a permanent foundation.

**(D) Application of Tax.**

1. Tax applies to 40 percent of the sales price of the building to the consumer excluding any charges for placing the completed building on the site. The sales price of the building shall include amounts representing tangible personal property installed in the building by a subcontractor, whether prior to or after installation of the building at the site, provided such installation is called for in the prime contract for the building. A separate contract to furnish and install tangible personal property in a factory-built school building after installation of the building at the site is a construction contract and tax applies as in (b) above. Any contract or subcontract for site preparation (e.g., foundation) is a construction contract and tax applies as in (b) above.

2. The sale of a factory-built school building to a purchaser who will resell the building without installation is a sale for resale and the seller may accept a resale certificate from the purchaser. If the purchaser then sells to a contractor who has an existing contract to install the building on a school site, tax will apply as in (c)(4)(D)l. above. If tax has been paid on the purchase price of a factory-built school building which is subsequently resold for installation, a tax-paid purchases resold deduction may be taken as provided in Regulation 1701 (18 CCR 1701).

**(E) Exclusion Certificate.** For the period September 26, 1989, through September 12, 1990, if the purchaser certifies in writing to the retailer that the factory built school building purchased will be consumed in a manner or for a purpose entitling the retailer to exclude 60% of the gross receipts or sales price from the measure of tax and uses the property in some other manner or for some other purpose, the purchaser shall be liable for payment of tax measured by 60% of the sales price. For the above stated period, all retailers who make retail sales of "factory-built school buildings" claimed to be subject to tax measured by 40 percent of the sales price must obtain from the "consumer" a signed certificate substantially in the form set forth below.

**CLAIM FOR 60% EXCLUSION FROM TAX ON  
PURCHASE OF FACTORY-BUILT SCHOOL BUILDINGS  
(Sec. 6012.6, Rev. & Tax. Code)**

I hereby certify that the factory-built school building that I

\_\_\_\_\_

(Name of Purchaser-Consumer)

am purchasing under the authority of this certificate from

\_\_\_\_\_

(Name of Retailer)

will be used as a school building as defined in Sales and Use Tax Regulation 1521. My seller's permit number, if any, is

\_\_\_\_\_

I further certify that I understand and agree that if the property purchased under the authority of this certificate is used by the purchaser for any purpose other than indicated above, the purchaser shall be liable for payment of tax to the State Board of Equalization at the time of such use measured by 60% of the sales price of the factory-built school building.

Signed by \_\_\_\_\_  
(Name of Purchaser)

As: \_\_\_\_\_  
(Owner, Partner, Purchasing Agent, etc.)

Date \_\_\_\_\_

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**Proposed Amendments to Regulation 1521**

cab or car	door safety edge on cab	pumps
car doors	door sills on cab	pushbuttons on cab
car platform and sling	electronic door protector	wire and piping (which are components of a fixture)
door hanger on cab	jack assembly	
door openers	motors	

Following are examples of components constituting "materials" when attached to realty:

car guides	hoistway door sills and jams	sound insulating panels on materials"
casing section of jack assembly	hoistway door supports	structural steel (unless part of the cab, car, or other "fixture")
guide rails	hoistway entrance	hoistway doors
pushbuttons on hoistway	valve strainer	wire and piping attached to "materials"
hoistway door frames	rail buckets	hoistway door safety edge
sill, struts		

Following are examples of components constituting parts of escalators or moving sidewalks which are fixtures:

staircase	chains	other operating mechanisms
moving sidewalk	sprockets	
moving handrails	motors	

(8) TELEPHONE SWITCHBOARDS AND INSTRUMENTS. Telephone switching equipment installed in a building specifically designed to accommodate the equipment or attached to a building or structure in a manner such that its removal would cause damage to the equipment or building in which it is installed will be considered to be "fixtures" under paragraph (a)(5) of this regulation.

Telephone handsets, modular switching equipment and standardized, off-shelf, general purpose switching equipment sold for use in general purpose office buildings constitute machinery and equipment under paragraph (a)(6) of this regulation. Handsets, modular switching equipment and standardized equipment were previously classified as fixtures.

This change in classification shall be applied prospectively only with respect to construction contracts entered into on and after July 1, 1988, by contractors other than United States construction contractors.

(9) DEEP-WELL AGRICULTURAL PUMPS. A deep-well agricultural pump is tangible personal property if installed so that it rests in position by force of gravity and is not otherwise affixed to the land.

The pump is a fixture if:

- (A) It is affixed to the land such as by concrete, bolts or screws,
- (B) It is physically connected to an irrigation system such as by pipes or couplings so as to become an integral part of the system, or
- (C) It is enclosed by a pump house or other building or structure .

(10) REMOTE CONTROL GARAGE DOOR OPENERS. Remote control garage door opening units are fixtures. Portable transmitter units furnished pursuant to a construction contract are deemed to be fixtures and are taxable as provided in subdivision (b)(2)(B). Sales of portable transmitter units not a part of a construction contract, as, for example, sales of replacement units, are retail sales of tangible personal property and subject to tax as such.

(11) EXCESS REIMBURSEMENT The excess tax reimbursement provisions of Regulation 1700 apply to construction contractors.

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The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

## Proposed Amendments to Regulation 1521

### (12) ON-PREMISE ELECTRIC SIGNS

(A) An on-premise electric sign is any electrically powered or illuminated structure, housing, sign, device, figure, statuary, painting, display, message, placard, or other contrivance or any part thereof affixed to real property and intended or used to advertise, or to provide data or information in the nature of advertising, for any of the following purposes: 1) To designate, identify, or indicate the name or business of the owner or occupant of the premises upon which the advertising display is located, or 2) To advertise the business conducted, services available or rendered, or the goods produced, sold, or available for sale, upon the property where the advertising display has been erected.

(B) **Application of tax.** An on-premise electric sign is a fixture and tax applies to the sale price of the sign. Notwithstanding the provisions of 1521(b)(2)(B), operative October 1, 2000, if the contract does not state the sale price of the sign, tax applies to 33 percent of the contract price of on-premise electric signs that are furnished and installed by the seller. "Contract price" includes charges for materials, fabrication labor, installation labor, overhead, profit, and other charges associated with the sale and installation of the sign. If a contract provides that a contractor is to install an on-premise electric sign furnished by a third party, the charges for installation are not taxable. If a seller furnishes but does not install an on-premise electric sign, the seller is a retailer of the sign and tax applies to the total contract price.

Separately stated charges for transportation are subject to tax as defined in Regulation 1628, *Transportation Charges*.

(13) SOLAR CELLS, SOLAR PANELS AND SOLAR MODULES. A contract to furnish and install a solar energy system onto a structure or realty is a construction contract which involves furnishing and installing both materials and fixtures. A solar energy system is defined as any solar collector or other solar energy device that provides for the collection and distribution of solar energy and, where applicable, the storage of solar energy.

(A) Materials. Photovoltaic (PV) cells, solar panels and solar modules, including both solar thermal panels and solar electric PV panels, are considered materials when they function in the same manner as other materials such as roofing, windows, or walls and are incorporated into, attached to, or affixed to real property and, as such, lose their identity to become an integral and inseparable part of the real property. Examples of these types of solar panels include, but are not limited to, PV integrated skylights, PV panels used to function as a roof on a parking lot shade structure, and PV integrated roofing tiles.

Other materials include, but are not limited to, wiring, wiring harnesses, strapping, piping, and mounting systems.

(B) Fixtures. Photovoltaic (PV) cells, solar panels and solar modules, including both solar thermal panels and solar electric PV panels, are considered fixtures when they are accessory to a building or other structure and do not lose their identity as accessories when installed. Examples of these types of solar panels include, but are not limited to, rack mounted solar panels installed on roofs and solar panels used in free-standing solar arrays.

Other items included in the solar energy system which are considered fixtures include, but are not limited to, terminal boxes, DC and AC disconnect boxes, inverters, transformers, batteries and pumps.

Contractors furnishing and installing solar energy systems that include fixtures are required to hold seller's permits as described in subdivision (b)(4).

*Appendix A* The following is a list of typical items regarded as materials:

Asphalt	Lime	Roofing
Bricks	Linoleum	Sand
Builders' hardware	Lumber	Sheet metal
Caulking material	Macadam	Steel
Cement	Millwork	Stone
Conduit	Mortar	Stucco
Doors	Oil	Tile

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**Proposed Amendments to Regulation 1521**

Ducts	Paint	Wall coping
Electric wiring and connections	Paper	Wallboard
Flooring	<u>Photovoltaic (solar) integrated</u>	Wallpaper
Glass	<u>roofing tiles and skylights</u>	Wall-to-wall carpeting (when affixed to the floor)
Gravel	Piping, valves, and pipe fittings	Weather stripping
Insulation	Plaster	Windows
Lath	Power poles, towers, and lines	Window screens
Lead	Putty	Wire netting and screen
	Reinforcing mesh	Wood preserver

*Appendix B* The following is a list of typical items regarded as fixtures:

Air conditioning units	Furnaces, boilers, and heating units
Awnings	Lighting fixtures
Burglar alarm and fire alarm fixtures	Plumbing fixtures
Cabinets, counters, and lockers (prefabricated)	Refrigeration units
Cranes (including moving parts of cranes) affixed or annexed to a building, structure or fixed work <sup>1</sup>	Signs
Electric generators (affixed to and accessory to a building, structure or fixed works)	Television antennas
Elevators, hoists, and conveying units	Transformers and switchgear
	Vault doors and equipment
	Venetian blinds

*Appendix C* The following are lists of typical items regarded as:

<i>Machinery and Equipment</i>	<i>Not Machinery or Equipment</i>
Drill presses	Fixtures and materials as defined in this regulation
Electric generators (unaffixed, or, if affixed, which meet the requirements of subparagraph (a)(6))	Wiring, piping, etc., used as a source of power, water, etc., for machinery and equipment
Lathes	Radio transmission antennas
Machine tools	Large tanks (i.e., over 500 barrel capacity)
Printing presses	Fire alarm systems
	Street light standards
	Cooling towers other than small prefabricated cooling units

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**Initial Statement of Reasons (Gov. Code § 11346.2, subdivision (b))**  
**Overview/Non-Controlling Summary**

Regulation 1521, *Construction Contractors*, regarding the classification of solar cells, solar panels, and solar modules as materials or fixtures.

Regulation 1521 is proposed to be amended to clarify the classification of solar cells, solar panels, and solar modules either as materials or fixtures.

**Specific Purpose**

The purpose of the proposed regulation is to interpret, implement, and make specific Revenue and Taxation Code sections 6009, 6012, 6015 and 6016. The proposed regulation adds guidance to Regulation 1521 by explaining the application of the Sales and Use Tax Law to the sale and installation of solar cells, solar panels, and solar modules. The guidance provided explains that photovoltaic cells, solar panels, and solar modules are considered materials when they function in the same manner as other materials such as roofing, windows, or walls and are incorporated into, attached to, or affixed to real property and as such lose their identity by becoming an integral and inseparable part of the real property. Other types of photovoltaic cells, solar panels, and solar modules however are considered fixtures when they are accessory to a building or other structure and do not lose their identity as accessories when installed.

**Necessity**

This regulation is necessary to provide guidance to assessors and taxpayers affected by these statutes. Based upon submissions from the California Solar Energy Industries Association, it has come to the attention of the Board of Equalization that there is uncertainty within the solar energy industry regarding the application of tax to construction contracts providing for the furnishing and installation of photovoltaic systems. The California Solar Energy Industries Association expressed concern that Regulation 1521 was not sufficiently clear in its explanation of how tax applies to these construction contracts. Solar energy is an emerging industry, and, given the increased emphasis on alternative energy sources, it is anticipated that there could be a substantial increase in construction contracts involving solar power. Accordingly, this amendment is necessary to explain how the general rules regarding tax and construction contracts apply to specific examples involving construction contractors furnishing and installing solar cells, solar panels and solar modules, in order to ensure more accurate reporting of sales and use tax liabilities.

**Factual and Evidentiary Basis**

Regulation 1521 discusses the application of sales and use tax to construction contractors. The impetus for the amended regulation is reported industry uncertainty regarding the application of the sales and use tax to solar panels and photovoltaic cells when they are furnished and installed as part of a construction contract

Subdivision (c) (13) defines a solar energy system construction contract. Subdivision (c)(13)(A) defines “materials” used in solar energy systems. Subdivision (c) (13) (B) defines “fixtures” used in solar energy systems. The guidance provided in the proposed amendment is based upon Board staff legal and appraisal expertise.

Pursuant to Government Code section 11346.5, subdivision (a) (8), the Board of Equalization finds that the adoption of the proposed regulation will not have a significant adverse economic impact on private businesses or persons. The proposed amendment does not effect a change in the Sales and Use Tax Law, but instead merely provides clarification and explanation with respect to existing law and offers specific guidance on the application of such existing law to the solar energy industry. The regulation is proposed to interpret, implement, and make specific the authorizing statutes. These changes provide guidance with respect to the interpretation and administration of the current sales and use tax laws. Therefore, in its expert opinion, the Board has determined that these changes will not have a significant adverse economic impact on private businesses or persons.

## Regulation History

**Type of Regulation:** Sales and Use Tax  
**Regulation:** 1521  
**Title:** Construction Contractors  
**Preparation:** Lynn Whitaker/Lynda Cardwell  
**Legal Contact:** Robert Tucker/Sharon Jarvis

Proposed amendments provide that solar panels and photovoltaic cells are “materials” when they function in the same manner as other materials such as roofing, windows, or walls and are incorporated into, attached to, or affixed to real property and, as such, lose their identity to become an integral and inseparable part of the real property.

### History of Proposed Regulation:

June 1, 2007: Public Hearing  
April 14, 2007: Beginning of public comment period  
April 13, 2007: Notice of public hearing published in California Regulatory Notice Register, Register 2007, No. 15-Z, e-mailed and US mail to interested parties.  
February 1, 2007: Business Taxes Committee, Board authorized publication of proposed regulation (Vote 3-2)  
October 5, 2006: 2<sup>nd</sup> Interested Parties meeting  
August 22, 2006: 1<sup>st</sup> Interested Parties meeting  
June 6, 2006: Topic placed on Business Taxes Committee calendar  
May 17, 2006: Chief Counsel Matters, referred to Business Taxes Committee (Vote 5-0)

Sponsor: California Solar Energy Industries Association

Support: NA  
Oppose: NA

### **Alternatives Considered**

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

### **Availability Of Initial Statement Of Reasons And Text Of Proposed Regulation**

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

### **Availability Of Final Statement Of Reasons**

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It also will be available for your inspection at 450 N Street, Sacramento, California.

### **Additional Comments**

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

Sincerely,

  
Gary Evans, Acting Chief  
Board Proceedings Division

GE:dgo

Enclosures

**Proposed Amendments to Regulation 1521**

**Regulation 1521. CONSTRUCTION CONTRACTORS.**

**(a) DEFINITIONS.**

*Reference:* Sections 6006 - 6010, 6012, 6012.2., 6012.6, 6012.8, 6012.9, 6015, 6016, 6016.3, 6016.5, 6055, 6091-6095, 6203.5, 6241-6246, 6276, 6276.1, 6379, 6384, 6386, 6421, 6901.5, Revenue and Taxation Code.

**(1) CONSTRUCTION CONTRACT.**

**(A)** "Construction contract" means and includes a contract, whether on a lump sum, time and material, cost plus, or other basis, to:

1. Erect, construct, alter, or repair any building or other structure, project, development, or other improvement on or to real property, or
2. Erect, construct, alter, or repair any fixed works such as waterways and hydroelectric plants, steam and atomic electric generating plants, electrical transmission and distribution lines, telephone and telegraph lines, railroads, highways, airports, sewers and sewage disposal plants and systems, waterworks and water distribution systems, gas transmission and distribution systems, pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, refineries and chemical plants, or
3. Pave surfaces separately or in connection with any of the above works or projects, or
4. Furnish and install the property becoming a part of a central heating, air-conditioning, or electrical system of a building or other structure, and furnish and install wires, ducts, pipes, vents, and other conduit imbedded in or securely affixed to the land or a structure thereon.

**(B)** "Construction contract" does not include:

1. A contract for the sale or for the sale and installation of tangible personal property such as machinery and equipment, or
2. The furnishing of tangible personal property under what is otherwise a construction contract if the person furnishing the property is not responsible under the construction contract for the final affixation or installation of the property furnished.

**(2) CONSTRUCTION CONTRACTOR.** "Construction contractor" means any person who for himself or herself, in conjunction with, or by or through others, agrees to perform and does perform a construction contract. "Construction contractor" includes subcontractors and specialty contractors and those engaged in such building trades as carpentry, bricklaying, cement work, steel work, plastering, drywall installation, sheet metal work, roofing, tile and terrazzo work, electrical work, plumbing, heating, air-conditioning, elevator installation and construction, painting, and persons installing floor coverings, including linoleum, floor tile, and wall-to-wall carpeting, by permanently affixing such coverings to a floor. "Construction contractor" includes any person required to be licensed under the California Contractors' State License Law (Business & Professions Code Sections 7000 et seq.), and any person contracting with the United States to perform a construction contract, whether such persons are formed or organized under the laws of this state, or another state or country.

**(3) UNITED STATES CONSTRUCTION CONTRACTOR.** "United States construction contractor" means a construction contractor who for himself or herself, in conjunction with, or by or through others, agrees to perform and does perform a construction contract for the United States Government.

**(4) MATERIALS.** "Materials" means and includes construction materials and components, and other tangible personal property incorporated into, attached to, or affixed to, real property by contractors in the performance of a construction contract and which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of the real property. A list of typical items regarded as materials is set forth in Appendix A.

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## Proposed Amendments to Regulation 1521

(5) **FIXTURES.** "Fixtures" means and includes items which are accessory to a building or other structure and do not lose their identity as accessories when installed. A list of typical items regarded as fixtures is set forth in Appendix B.

(6) **MACHINERY AND EQUIPMENT.** "Machinery and equipment" means and includes property intended to be used in the production, manufacturing or processing of tangible personal property, the performance of services or for other purposes (e.g., research, testing, experimentation) not essential to the fixed works, building, or structure itself, but which property incidentally may, on account of its nature, be attached to the realty without losing its identity as a particular piece of machinery or equipment and, if attached, is readily removable without damage to the unit or to the realty. "Machinery and equipment" does not include junction boxes, switches, conduit and wiring, or valves, pipes, and tubing incorporated into fixed works, buildings, or other structures, whether or not such items are used solely or partially in connection with the operation of machinery and equipment, nor does it include items of tangible personal property such as power shovels, cranes, trucks, and hand or power tools used to perform the construction contract. A list of typical items regarded as machinery and equipment together with a list of typical items not regarded as machinery and equipment is set forth in Appendix C.

(7) **TIME AND MATERIAL CONTRACT.** "Time and material contract" means a contract under which the contractor agrees to furnish and install materials or fixtures, or both, and which sets forth separately a charge for the materials or fixtures and a charge for their installation or fabrication.

(8) **LUMP SUM CONTRACT.** "Lump sum contract" means a contract under which the contractor for a stated lump sum agrees to furnish and install materials or fixtures, or both. A lump sum contract does not become a time and material contract when the amounts attributable to materials, fixtures, labor, or tax are separately stated in the invoice.

### (b) APPLICATION OF TAX.

#### (1) UNITED STATES CONSTRUCTION CONTRACTORS.

**(A) Materials and Fixtures.** United States construction contractors are consumers of materials and fixtures which they furnish and install in the performance of contracts with the United States Government. Either the sales tax or the use tax applies with respect to sales of tangible personal property (including materials, fixtures, supplies, and equipment) to contractors for use in the performance of such contracts with the United States for the construction of improvements on or to real property in this state. The fact that the contract may provide principally for the manufacture or acquisition of tangible personal property is immaterial. The sales tax, but not the use tax, applies even though the contractor purchases the property as the agent of the United States.

**(B) Machinery and Equipment.** United States contractors are retailers of machinery and equipment furnished in connection with the performance of a construction contract with the United States Government. Tax does not apply to sales of machinery and equipment to United States contractors or subcontractors, provided title to the property passes to the United States before the contractor makes any use of it. Such sales are sales for resale, and the purchasing contractor may issue a resale certificate. A contractor who uses the machinery or equipment before title passes to the United States is the consumer of that machinery or equipment and either sales tax or use tax applies with respect to the sale to or the use by the contractor.

#### (2) CONSTRUCTION CONTRACTORS OTHER THAN UNITED STATES CONSTRUCTION CONTRACTORS.

##### (A) Materials.

1. In General. Construction contractors are consumers of materials which they furnish and install in the performance of construction contracts. Either sales tax or use tax applies with respect to the sale of the materials to or the use of the materials by the construction contractor.

2. When Contractor is Seller. A construction contractor may contract to sell materials and also to install the materials sold. If the contract explicitly provides for the transfer of title to the materials prior to the time the materials are installed, and separately states the sale price of the materials, exclusive of the charge for installation, the contractor will be deemed to be the retailer of the materials.

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**Proposed Amendments to Regulation 1521**

In the case of a time and material contract, if the contractor bills his or her customer an amount for "sales tax" computed upon his or her marked up billing for materials, it will be assumed, in the absence of convincing evidence to the contrary, that he or she is the retailer of the materials.

If the sale occurs in this state, the sales tax applies to the contractor's (retailer's) gross receipts from the sale of the materials. If the sale occurs prior to the time the property is brought into this state, the contractor's (retailer's) customer is the consumer and his or her use (unless otherwise exempt) is subject to use tax measured by the sales price. The contractor must collect the use tax and pay it to this state.

**(B) Fixtures.**

1. In General. Construction contractors are retailers of fixtures which they furnish and install in the performance of construction contracts and tax applies to their sales of the fixtures.

2. Measure of Tax.

a. In General. If the contract states the sale price at which the fixture is sold, tax applies to that price. If the contract does not state the sale price of the fixture, the sale price shall be deemed to be the cost price of the fixture to the contractor.

b. Determining Cost Price. If the contractor purchases the fixtures in a completed condition, the cost price is deemed to be the sale price of the fixture to him or her and shall include any manufacturer's excise tax or import duty imposed with respect to the fixture prior to its sale by the contractor.

If the contractor is the manufacturer of the fixture, the cost price is deemed to be the price at which similar fixtures in similar quantities ready for installation are sold by him or her to other contractors.

If similar fixtures are not sold to other contractors ready for installation, then the cost price shall be deemed to be the amount stated in the price lists, bid sheets or other records of the contractor.

If the sale price cannot be established in the above manner and the fixture is manufactured by the contractor, the cost price shall be deemed to be the aggregate of the following:

- [1] Cost of materials, including such items as freight-in and import duties,
- [2] Direct labor, including fringe benefits and payroll taxes,
- [3] Specific factory costs attributable to the fixture,
- [4] Any manufacturer's excise tax,
- [5] Pro rata share of all overhead attributable to the manufacture of the fixture, and
- [6] Reasonable profit from the manufacturing operations which, in the absence of evidence to the contrary, shall be deemed to be 5 percent of the sum of the preceding factors.

Jobsite fabrication labor and its prorated share of manufacturing overhead must be included in the sale price of the fixture. Jobsite fabrication labor includes assembly labor performed prior to attachment of a component or a fixture to a structure or other real property.

3. Exceptions - Leased Fixtures. In some instances the construction contractor may furnish and install a fixture for a person, other than the owner of the realty, who intends to lease the fixture in place as tangible personal property as provided in Section 6016.3 of the Revenue and Taxation Code and pay tax measured by rental receipts.

In this case the construction contractor may take a resale certificate from the lessor at the time of the transaction and the sale to the lessor will be considered to be a sale for resale. The resale certificate should indicate that the fixture is purchased for resale by the purchaser as tangible personal property under Section 6016.3 of the Revenue and Taxation Code.

**(C) Machinery and Equipment.**

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## Proposed Amendments to Regulation 1521

1. In General. Construction contractors are retailers of machinery and equipment even though the machinery and equipment is furnished in connection with a construction contract. Tax applies to the contractor's gross receipts from such sales.

2. Measure of Tax.

a. In General. Tax applies to the gross receipts from the sale of machinery and equipment furnished and installed by a construction contractor. If the contract calls only for the furnishing and installation of machinery and equipment, tax applies to the total contract price less those charges excludible from gross receipts under Section 6012 of the Revenue and Taxation Code.

b. Lump Sum Contracts - Determining Gross Receipts. If the contract is for a lump sum and includes the furnishing and installation of materials, fixtures, and machinery and equipment, the gross receipts from the sale of the machinery and equipment shall be the price at which similar quantities ready for installation are sold at retail delivered in the market area where the installation takes place.

If there is no such retail price for the machinery and equipment, then the gross receipts shall be determined from the contracts, price lists, bid sheets, or other records of the contractor.

If the gross receipts cannot be established in the above manner and the machinery and equipment is manufactured by the contractor, the gross receipts from the sale shall be the aggregate of the following:

- [1] Cost of materials, including such items as freight-in and import duties,
- [2] Direct labor, including fringe benefits and payroll taxes,
- [3] Specific factory costs attributable to the machinery or equipment,
- [4] Any manufacturer's excise tax,
- [5] Pro rata share of all overhead attributable to the machinery or equipment, including overhead attributable to manufacturing, selling, contracting, and administration, and
- [6] Reasonable profit from the manufacture and sale of the machinery or equipment which, in the absence of evidence to the contrary, shall be deemed to be 5 percent of the sum of the preceding factors.

Jobsite fabrication labor and its prorated share of manufacturing overhead must be included in the sale price of the machinery or equipment. Jobsite fabrication labor includes assembly labor performed prior to attachment of a component or the machinery or equipment to a structure or other real property.

**(D) Cost Plus A Fee Contracts.** When a contractor enters into a construction contract for a cost plus a fee or time and materials plus a fee, whether the fee is a lump sum or a percentage of costs, the fee is not included in the measure of tax. When the contractor is the manufacturer of the fixtures or machinery and equipment, the "cost price" of the fixtures and the gross receipts from the sale of the machinery and equipment shall be determined in accordance with (B) and (C) above.

(3) MISCELLANEOUS SALES BY CONTRACTORS. In addition to sales of fixtures and machinery and equipment, tax applies to all retail sales by contractors of tangible personal property, including parts, supplies, tools, construction equipment, buildings severed or to be severed by the contractor, and furniture, including furniture sold with a building, even though the building is sold "in place."

(4) PERMITS. Contractors engaged solely in performing construction contracts which do not involve the sale and installation of fixtures and who do not also engage in business as sellers or retailers are not required to hold seller's permits. However, if a contractor is a seller or retailer because he or she makes sales of fixtures, materials, or machinery and equipment, or other tangible personal property either in connection with or as part of a construction contract, or otherwise, he or she is required to hold a seller's permit.

(5) SUPPLIES AND TOOLS FOR SELF-USE. Contractors are the consumers of supplies such as oxygen, acetylene, gasoline, acid, thread-cutting oil, and tools and parts for tools, which they use in their business, and the tax applies to the sale of such supplies and tools to contractors.

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**Proposed Amendments to Regulation 1521**

**(6) EXEMPTION CERTIFICATES.**

**(A) Resale Certificates.** Contractors holding valid seller's permits may purchase fixtures and machinery and equipment for resale by issuing resale certificates to their suppliers. They may not purchase materials for resale unless they are also in the business of selling materials.

A contractor cannot avoid liability for sales or use tax on materials or fixtures furnished and installed by him or her by taking a resale certificate from the prime contractor, interior decorators, designers, department stores, or others. However, under the circumstances described in subsection (b)(2)(B)3., a contractor may take a resale certificate for fixtures furnished and installed by him or her for a person other than the owner of the realty.

**(B) Exemption Certificates for Out-of-State Use.** Sales tax does not apply to sales of tangible personal property to a construction contractor who holds a valid California seller's permit when the property is used by the contractor outside this state in his or her performance of a contract to improve real property and as a result of such use the property is incorporated into and becomes a part of real property located outside this state. This exemption is available only if at the time of the purchase the contractor certifies in writing to the seller that he or she holds a valid California seller's permit (giving the number of that permit and identifying the property purchased) and states that the property will be used in the manner stated above. The certificate must be signed by the contractor or an authorized employee. Such a certification may appear in the body of a purchase order which bears the signature of the purchaser. Any certificate given subsequent to the time of purchase will not be recognized.

If the property purchased under a certificate is used by the contractor in any other manner or for any other purpose than stated in the certificate, the contractor shall be liable for sales tax as if he or she were a retailer making a retail sale of the property at the time of such use, and the sale price of the property to him or her shall be deemed the gross receipts from the sale.

**(C) Deductions for Tax-Paid Purchases Resold.** A contractor may claim a "tax-paid purchases resold" deduction for any property of which he or she is the retailer when he or she has reimbursed his or her vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the property, and has resold the property prior to making any use of it. In the event that the contractor sells short ends or pieces which are not used other than in severing them from larger units purchased by him or her and as to which he or she has paid sales tax reimbursement or use tax, he or she may claim the deduction for tax-paid purchases resold, but the amount of the deduction shall not exceed the price at which he or she sells such short ends or pieces.

**(c) PARTICULAR APPLICATIONS.**

**(1) DRAPERIES AND DRAPERY HARDWARE.** Persons who contract to sell and install draperies including drapery hardware, such as brackets, rods, tracks, etc., are retailers of the items which they furnish and install. Tax applies to the entire contract price exclusive of the charge for installation which charge should be separately stated. Installers who furnish drapery hardware or other tangible personal property may accept resale certificates from department stores or other sellers to furnish and install the draperies and drapery hardware.

The department stores or other sellers furnishing resale certificates are required to pay the tax to the state upon their selling price of the draperies and drapery hardware, exclusive of installation charges. The installer should segregate his or her installation charge in order that the department store or other seller may properly segregate its charge attributable to installation for purposes of determining its taxable gross receipts.

**(2) PREFABRICATED CABINETS.** A cabinet will be considered to be "prefabricated" and a "fixture" when 90 percent of the total direct cost of labor and material in fabricating and installing the cabinet is incurred prior to affixation to the realty. In determining this 90 percent, the total direct cost of all labor and materials in fabricating the cabinet to the point of installation will be compared to the total direct cost of all labor and materials in completely fabricating and installing the cabinet. If more than one cabinet is fabricated and installed under the contract, each cabinet will be considered separately in determining whether the cabinet is prefabricated.

**(3) PREFABRICATED BUILDINGS.** Prefabricated units such as commercial coaches, house trailers, etc., registered with the Department of Motor Vehicles or the Department of Housing and Community Development, are

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**Proposed Amendments to Regulation 1521**

tangible personal property even though they may be connected to plumbing and utilities. A mobilehome which meets or is modified to meet, all applicable building codes and regulations and which is permanently affixed to realty, is an improvement to realty and is not personal property. A contract to furnish and install a prefabricated or modular building similar in size to, but which is not, a factory-built school building (relocatable classroom) is a construction contract whether the building rests in place by its own weight or is physically attached to realty. It is immaterial whether the building is erected upon or affixed to land owned by the owner of the building or is leased to the landowner or lessee of the land.

Generally, a contract to furnish and install a small prefabricated building, such as a shed or kiosk, which is movable as a unit from its site of installation, is a construction contract only if the building is required to be physically attached to real property by the seller, upon a concrete foundation or otherwise. The sale of such a unit to rest in place by its own weight, whether upon the ground, a concrete slab, or sills or piers, is not a construction contract even though the seller may deliver the unit to its site of use.

Prefabricated or modular buildings which are "factory-built housing" where permanently affixed to the realty are improvements to realty. The manufacturer of factory-built housing who contracts to furnish and install the factory-built housing manufactured by him or her is the consumer of the materials used in building and installing the factory-built housing and the retailer of the fixtures. Tax applies as provided in (b) above.

**(4) FACTORY-BUILT SCHOOL BUILDINGS.**

**(A) General.** On and after September 26, 1989, a contract to furnish and install a factory-built school building is not a construction contract but rather is a sale of tangible personal property.

**(B) Definitions.**

1. "Factory-built School Building." The term "factory-built school building" (relocatable classrooms) means and includes:

**Aa.** For the period September 26, 1989 through September 12, 1990, any building designed to be used as a school building as defined in Sections 39214 and 81165 of the Education Code and so used. A factory-built school building must be designed in compliance with state laws for school construction and approved by the structural safety section in the office of the State Architect. It must be wholly or substantially manufactured at an offsite location for the purpose of being assembled, erected, or installed on a schoolsite.

**Bb.** Effective September 13, 1990, any building which is designed or intended for use as a school building and is wholly or substantially manufactured at an offsite location for the purpose of being assembled, erected, or installed on a site owned or leased by a school district or a community college district. A factory-built school building must be designed and manufactured in accordance with building standards adopted and approved pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 of the Health and Safety Code and must be approved by the structural safety section in the office of the State Architect.

The term does not include buildings licensed by either the Department of Motor Vehicles or the Department of Housing and Community Development. The term also does not include prefabricated or modular buildings which are similar in size to, but which are not, "factory-built school buildings". It is immaterial whether the building is erected upon or affixed to land owned by the owner of the building or is leased to the landowner or lessee of the land.

2. "Consumer."

**Aa.** For the period September 26, 1989 through September 12, 1990, the term "consumer" as used herein means either (1) a school or a school district or (2) a contractor who purchases a factory-built school building for the purpose of fulfilling the requirements of an existing contract with a school or school district to furnish and install such building.

**Bb.** Effective September 13, 1990, the term "consumer" as used herein means either (1) a school district or a community college district or (2) a contractor who purchases a factory-built school building for the purpose of

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**Proposed Amendments to Regulation 1521**

fulfilling the requirements of an existing contract with a school district or a community college district to furnish and install such building.

**(C) Place of Sale.** The place of sale or purchase of a factory-built school building is the place of business of the retailer regardless of whether the sale of the building includes installation or whether the building is placed upon a permanent foundation.

**(D) Application of Tax.**

1. Tax applies to 40 percent of the sales price of the building to the consumer excluding any charges for placing the completed building on the site. The sales price of the building shall include amounts representing tangible personal property installed in the building by a subcontractor, whether prior to or after installation of the building at the site, provided such installation is called for in the prime contract for the building. A separate contract to furnish and install tangible personal property in a factory-built school building after installation of the building at the site is a construction contract and tax applies as in (b) above. Any contract or subcontract for site preparation (e.g., foundation) is a construction contract and tax applies as in (b) above.

2. The sale of a factory-built school building to a purchaser who will resell the building without installation is a sale for resale and the seller may accept a resale certificate from the purchaser. If the purchaser then sells to a contractor who has an existing contract to install the building on a school site, tax will apply as in (c)(4)(D)l. above. If tax has been paid on the purchase price of a factory-built school building which is subsequently resold for installation, a tax-paid purchases resold deduction may be taken as provided in Regulation 1701 (18 CCR 1701).

**(E) Exclusion Certificate.** For the period September 26, 1989, through September 12, 1990, if the purchaser certifies in writing to the retailer that the factory built school building purchased will be consumed in a manner or for a purpose entitling the retailer to exclude 60% of the gross receipts or sales price from the measure of tax and uses the property in some other manner or for some other purpose, the purchaser shall be liable for payment of tax measured by 60% of the sales price. For the above stated period, all retailers who make retail sales of "factory-built school buildings" claimed to be subject to tax measured by 40 percent of the sales price must obtain from the "consumer" a signed certificate substantially in the form set forth below.

**CLAIM FOR 60% EXCLUSION FROM TAX ON  
PURCHASE OF FACTORY-BUILT SCHOOL BUILDINGS  
(Sec. 6012.6, Rev. & Tax. Code)**

I hereby certify that the factory-built school building that I

\_\_\_\_\_

(Name of Purchaser-Consumer)

am purchasing under the authority of this certificate from

\_\_\_\_\_

(Name of Retailer)

will be used as a school building as defined in Sales and Use Tax Regulation 1521. My seller's permit number, if any, is

\_\_\_\_\_

I further certify that I understand and agree that if the property purchased under the authority of this certificate is used by the purchaser for any purpose other than indicated above, the purchaser shall be liable for payment of tax to the State Board of Equalization at the time of such use measured by 60% of the sales price of the factory-built school building.

Signed by \_\_\_\_\_  
(Name of Purchaser)

As: \_\_\_\_\_  
(Owner, Partner, Purchasing Agent, etc.)

Date \_\_\_\_\_

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cab or car	door safety edge on cab	pumps
car doors	door sills on cab	pushbuttons on cab
car platform and sling	electronic door protector	wire and piping (which are components of a fixture)
door hanger on cab	jack assembly	
door openers	motors	

Following are examples of components constituting "materials" when attached to realty:

car guides	hoistway door sills and jams	sound insulating panels on materials"
casing section of jack assembly	hoistway door supports	structural steel (unless part of the cab, car, or other "fixture")
guide rails	hoistway entrance	hoistway doors
pushbuttons on hoistway	valve strainer	wire and piping attached to "materials"
hoistway door frames	rail buckets	hoistway door safety edge
sill, struts		

Following are examples of components constituting parts of escalators or moving sidewalks which are fixtures:

staircase	chains	other operating mechanisms
moving sidewalk	sprockets	
moving handrails	motors	

(8) TELEPHONE SWITCHBOARDS AND INSTRUMENTS. Telephone switching equipment installed in a building specifically designed to accommodate the equipment or attached to a building or structure in a manner such that its removal would cause damage to the equipment or building in which it is installed will be considered to be "fixtures" under paragraph (a)(5) of this regulation.

Telephone handsets, modular switching equipment and standardized, off-shelf, general purpose switching equipment sold for use in general purpose office buildings constitute machinery and equipment under paragraph (a)(6) of this regulation. Handsets, modular switching equipment and standardized equipment were previously classified as fixtures.

This change in classification shall be applied prospectively only with respect to construction contracts entered into on and after July 1, 1988, by contractors other than United States construction contractors.

(9) DEEP-WELL AGRICULTURAL PUMPS. A deep-well agricultural pump is tangible personal property if installed so that it rests in position by force of gravity and is not otherwise affixed to the land.

The pump is a fixture if:

- (A) It is affixed to the land such as by concrete, bolts or screws,
- (B) It is physically connected to an irrigation system such as by pipes or couplings so as to become an integral part of the system, or
- (C) It is enclosed by a pump house or other building or structure .

(10) REMOTE CONTROL GARAGE DOOR OPENERS. Remote control garage door opening units are fixtures. Portable transmitter units furnished pursuant to a construction contract are deemed to be fixtures and are taxable as provided in subdivision (b)(2)(B). Sales of portable transmitter units not a part of a construction contract, as, for example, sales of replacement units, are retail sales of tangible personal property and subject to tax as such.

(11) EXCESS REIMBURSEMENT The excess tax reimbursement provisions of Regulation 1700 apply to construction contractors.

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**Proposed Amendments to Regulation 1521**

(12) ON-PREMISE ELECTRIC SIGNS

(A) An on-premise electric sign is any electrically powered or illuminated structure, housing, sign, device, figure, statuary, painting, display, message, placard, or other contrivance or any part thereof affixed to real property and intended or used to advertise, or to provide data or information in the nature of advertising, for any of the following purposes: 1) To designate, identify, or indicate the name or business of the owner or occupant of the premises upon which the advertising display is located, or 2) To advertise the business conducted, services available or rendered, or the goods produced, sold, or available for sale, upon the property where the advertising display has been erected.

(B) **Application of tax.** An on-premise electric sign is a fixture and tax applies to the sale price of the sign. Notwithstanding the provisions of 1521(b)(2)(B), operative October 1, 2000, if the contract does not state the sale price of the sign, tax applies to 33 percent of the contract price of on-premise electric signs that are furnished and installed by the seller. "Contract price" includes charges for materials, fabrication labor, installation labor, overhead, profit, and other charges associated with the sale and installation of the sign. If a contract provides that a contractor is to install an on-premise electric sign furnished by a third party, the charges for installation are not taxable. If a seller furnishes but does not install an on-premise electric sign, the seller is a retailer of the sign and tax applies to the total contract price.

Separately stated charges for transportation are subject to tax as defined in Regulation 1628, *Transportation Charges*.

(13) SOLAR CELLS, SOLAR PANELS AND SOLAR MODULES. A contract to furnish and install a solar energy system onto a structure or realty is a construction contract which involves furnishing and installing both materials and fixtures. A solar energy system is defined as any solar collector or other solar energy device that provides for the collection and distribution of solar energy and, where applicable, the storage of solar energy.

(A) Materials. Photovoltaic (PV) cells, solar panels and solar modules, including both solar thermal panels and solar electric PV panels, are considered materials when they function in the same manner as other materials such as roofing, windows, or walls and are incorporated into, attached to, or affixed to real property and, as such, lose their identity to become an integral and inseparable part of the real property. Examples of these types of solar panels include, but are not limited to, PV integrated skylights, PV panels used to function as a roof on a parking lot shade structure, and PV integrated roofing tiles.

Other materials include, but are not limited to, wiring, wiring harnesses, strapping, piping, and mounting systems.

(B) Fixtures. Photovoltaic (PV) cells, solar panels and solar modules, including both solar thermal panels and solar electric PV panels, are considered fixtures when they are accessory to a building or other structure and do not lose their identity as accessories when installed. Examples of these types of solar panels include, but are not limited to, rack mounted solar panels installed on roofs and solar panels used in free-standing solar arrays.

Other items included in the solar energy system which are considered fixtures include, but are not limited to, terminal boxes, DC and AC disconnect boxes, inverters, transformers, batteries and pumps.

Contractors furnishing and installing solar energy systems that include fixtures are required to hold seller's permits as described in subdivision (b)(4).

Appendix A The following is a list of typical items regarded as materials:

Asphalt	Lime	Roofing
Bricks	Linoleum	Sand
Builders' hardware	Lumber	Sheet metal
Caulking material	Macadam	Steel
Cement	Millwork	Stone
Conduit	Mortar	Stucco
Doors	Oil	Tile

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Ducts	Paint	Wall coping
Electric wiring and connections	Paper	Wallboard
Flooring	<u>Photovoltaic (solar) integrated</u>	Wallpaper
Glass	<u>roofing tiles and skylights</u>	Wall-to-wall carpeting (when affixed to the floor)
Gravel	Piping, valves, and pipe fittings	Weather stripping
Insulation	Plaster	Windows
Lath	Power poles, towers, and lines	Window screens
Lead	Putty	Wire netting and screen
	Reinforcing mesh	Wood preserver

*Appendix B* The following is a list of typical items regarded as fixtures:

Air conditioning units	Furnaces, boilers, and heating units
Awnings	Lighting fixtures
Burglar alarm and fire alarm fixtures	Plumbing fixtures
Cabinets, counters, and lockers (prefabricated)	Refrigeration units
Cranes (including moving parts of cranes) affixed or annexed to a building, structure or fixed work <sup>1</sup>	Signs
Electric generators (affixed to and accessory to a building, structure or fixed works)	Television antennas
Elevators, hoists, and conveying units	Transformers and switchgear
	Vault doors and equipment
	Venetian blinds

*Appendix C* The following are lists of typical items regarded as:

<i>Machinery and Equipment</i>	<i>Not Machinery or Equipment</i>
Drill presses	Fixtures and materials as defined in this regulation
Electric generators (unaffixed, or, if affixed, which meet the requirements of subparagraph (a)(6))	Wiring, piping, etc., used as a source of power, water, etc., for machinery and equipment
Lathes	Radio transmission antennas
Machine tools	Large tanks (i.e., over 500 barrel capacity)
Printing presses	Fire alarm systems
	Street light standards
	Cooling towers other than small prefabricated cooling units

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**Initial Statement of Reasons (Gov. Code § 11346.2, subdivision (b))**  
**Overview/Non-Controlling Summary**

Regulation 1521, *Construction Contractors*, regarding the classification of solar cells, solar panels, and solar modules as materials or fixtures.

Regulation 1521 is proposed to be amended to clarify the classification of solar cells, solar panels, and solar modules either as materials or fixtures.

**Specific Purpose**

The purpose of the proposed regulation is to interpret, implement, and make specific Revenue and Taxation Code sections 6009, 6012, 6015 and 6016. The proposed regulation adds guidance to Regulation 1521 by explaining the application of the Sales and Use Tax Law to the sale and installation of solar cells, solar panels, and solar modules. The guidance provided explains that photovoltaic cells, solar panels, and solar modules are considered materials when they function in the same manner as other materials such as roofing, windows, or walls and are incorporated into, attached to, or affixed to real property and as such lose their identity by becoming an integral and inseparable part of the real property. Other types of photovoltaic cells, solar panels, and solar modules however are considered fixtures when they are accessory to a building or other structure and do not lose their identity as accessories when installed.

**Necessity**

This regulation is necessary to provide guidance to assessors and taxpayers affected by these statutes. Based upon submissions from the California Solar Energy Industries Association, it has come to the attention of the Board of Equalization that there is uncertainty within the solar energy industry regarding the application of tax to construction contracts providing for the furnishing and installation of photovoltaic systems. The California Solar Energy Industries Association expressed concern that Regulation 1521 was not sufficiently clear in its explanation of how tax applies to these construction contracts. Solar energy is an emerging industry, and, given the increased emphasis on alternative energy sources, it is anticipated that there could be a substantial increase in construction contracts involving solar power. Accordingly, this amendment is necessary to explain how the general rules regarding tax and construction contracts apply to specific examples involving construction contractors furnishing and installing solar cells, solar panels and solar modules, in order to ensure more accurate reporting of sales and use tax liabilities.

**Factual and Evidentiary Basis**

Regulation 1521 discusses the application of sales and use tax to construction contractors. The impetus for the amended regulation is reported industry uncertainty regarding the application of the sales and use tax to solar panels and photovoltaic cells when they are furnished and installed as part of a construction contract

Subdivision (c) (13) defines a solar energy system construction contract. Subdivision (c)(13)(A) defines “materials” used in solar energy systems. Subdivision (c) (13) (B) defines “fixtures” used in solar energy systems. The guidance provided in the proposed amendment is based upon Board staff legal and appraisal expertise.

Pursuant to Government Code section 11346.5, subdivision (a) (8), the Board of Equalization finds that the adoption of the proposed regulation will not have a significant adverse economic impact on private businesses or persons. The proposed amendment does not effect a change in the Sales and Use Tax Law, but instead merely provides clarification and explanation with respect to existing law and offers specific guidance on the application of such existing law to the solar energy industry. The regulation is proposed to interpret, implement, and make specific the authorizing statutes. These changes provide guidance with respect to the interpretation and administration of the current sales and use tax laws. Therefore, in its expert opinion, the Board has determined that these changes will not have a significant adverse economic impact on private businesses or persons.

## Regulation History

**Type of Regulation:** Sales and Use Tax  
**Regulation:** 1521  
**Title:** Construction Contractors  
**Preparation:** Lynn Whitaker/Lynda Cardwell  
**Legal Contact:** Robert Tucker/Sharon Jarvis

Proposed amendments provide that solar panels and photovoltaic cells are “materials” when they function in the same manner as other materials such as roofing, windows, or walls and are incorporated into, attached to, or affixed to real property and, as such, lose their identity to become an integral and inseparable part of the real property.

### History of Proposed Regulation:

June 1, 2007: Public Hearing  
April 14, 2007: Beginning of public comment period  
April 13, 2007: Notice of public hearing published in California Regulatory Notice Register, Register 2007, No. 15-Z, e-mailed and US mail to interested parties.  
February 1, 2007: Business Taxes Committee, Board authorized publication of proposed regulation (Vote 3-2)  
October 5, 2006: 2<sup>nd</sup> Interested Parties meeting  
August 22, 2006: 1<sup>st</sup> Interested Parties meeting  
June 6, 2006: Topic placed on Business Taxes Committee calendar  
May 17, 2006: Chief Counsel Matters, referred to Business Taxes Committee (Vote 5-0)

Sponsor: California Solar Energy Industries Association

Support: NA  
Oppose: NA

### **Effect On Business**

Pursuant to Government Code section 11346.5(a)(7), the Board of Equalization makes an initial determination that the adoption of Proposed Regulation 1521 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

### **Cost Impact On Private Person Or Businesses**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **Significant Effect On Housing Costs**

No significant effect.

### **Federal Regulations**

Proposed Regulation 1521 has no comparable federal regulations.

### **Authority**

Section 7051 Revenue and Taxation Code.

### **Reference**

Sections 6009, 6012, 6015 and 6016, Revenue and Taxation Code.

### **Contact**

Questions regarding the substance of the proposed regulation should be directed to Ms. Lisa Andrews (916) 322-5989, at 450 N Street, Sacramento, CA 95814, e-mail [Lisa.Andrews@boe.ca.gov](mailto:Lisa.Andrews@boe.ca.gov) or by mail at State Board of Equalization, Attn: Lisa Andrews, MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail [Diane.Olson@boe.ca.gov](mailto:Diane.Olson@boe.ca.gov) or Ms. Joann Richmond, Property Tax Appeals Analyst, telephone (916) 322-1931, fax (916) 324-3984, e-mail [Joann.Richmond@boe.ca.gov](mailto:Joann.Richmond@boe.ca.gov) or by mail at State Board of Equalization, Attn: Diane Olson or Joann Richmond, MIC:80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

### **Alternatives Considered**

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

### **Availability Of Initial Statement Of Reasons And Text Of Proposed Regulation**

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

### **Availability Of Final Statement Of Reasons**

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It also will be available for your inspection at 450 N Street, Sacramento, California.

### **Additional Comments**

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

Sincerely,

  
Gary Evans, Acting Chief  
Board Proceedings Division

GE:dgo

Enclosures

**Proposed Amendments to Regulation 1521**

**Regulation 1521. CONSTRUCTION CONTRACTORS.**

**(a) DEFINITIONS.**

*Reference:* Sections 6006 - 6010, 6012, 6012.2., 6012.6, 6012.8, 6012.9, 6015, 6016, 6016.3, 6016.5, 6055, 6091-6095, 6203.5, 6241-6246, 6276, 6276.1, 6379, 6384, 6386, 6421, 6901.5, Revenue and Taxation Code.

**(1) CONSTRUCTION CONTRACT.**

**(A)** "Construction contract" means and includes a contract, whether on a lump sum, time and material, cost plus, or other basis, to:

1. Erect, construct, alter, or repair any building or other structure, project, development, or other improvement on or to real property, or
2. Erect, construct, alter, or repair any fixed works such as waterways and hydroelectric plants, steam and atomic electric generating plants, electrical transmission and distribution lines, telephone and telegraph lines, railroads, highways, airports, sewers and sewage disposal plants and systems, waterworks and water distribution systems, gas transmission and distribution systems, pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, refineries and chemical plants, or
3. Pave surfaces separately or in connection with any of the above works or projects, or
4. Furnish and install the property becoming a part of a central heating, air-conditioning, or electrical system of a building or other structure, and furnish and install wires, ducts, pipes, vents, and other conduit imbedded in or securely affixed to the land or a structure thereon.

**(B)** "Construction contract" does not include:

1. A contract for the sale or for the sale and installation of tangible personal property such as machinery and equipment, or
2. The furnishing of tangible personal property under what is otherwise a construction contract if the person furnishing the property is not responsible under the construction contract for the final affixation or installation of the property furnished.

**(2) CONSTRUCTION CONTRACTOR.** "Construction contractor" means any person who for himself or herself, in conjunction with, or by or through others, agrees to perform and does perform a construction contract. "Construction contractor" includes subcontractors and specialty contractors and those engaged in such building trades as carpentry, bricklaying, cement work, steel work, plastering, drywall installation, sheet metal work, roofing, tile and terrazzo work, electrical work, plumbing, heating, air-conditioning, elevator installation and construction, painting, and persons installing floor coverings, including linoleum, floor tile, and wall-to-wall carpeting, by permanently affixing such coverings to a floor. "Construction contractor" includes any person required to be licensed under the California Contractors' State License Law (Business & Professions Code Sections 7000 et seq.), and any person contracting with the United States to perform a construction contract, whether such persons are formed or organized under the laws of this state, or another state or country.

**(3) UNITED STATES CONSTRUCTION CONTRACTOR.** "United States construction contractor" means a construction contractor who for himself or herself, in conjunction with, or by or through others, agrees to perform and does perform a construction contract for the United States Government.

**(4) MATERIALS.** "Materials" means and includes construction materials and components, and other tangible personal property incorporated into, attached to, or affixed to, real property by contractors in the performance of a construction contract and which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of the real property. A list of typical items regarded as materials is set forth in Appendix A.

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## Proposed Amendments to Regulation 1521

(5) **FIXTURES.** "Fixtures" means and includes items which are accessory to a building or other structure and do not lose their identity as accessories when installed. A list of typical items regarded as fixtures is set forth in Appendix B.

(6) **MACHINERY AND EQUIPMENT.** "Machinery and equipment" means and includes property intended to be used in the production, manufacturing or processing of tangible personal property, the performance of services or for other purposes (e.g., research, testing, experimentation) not essential to the fixed works, building, or structure itself, but which property incidentally may, on account of its nature, be attached to the realty without losing its identity as a particular piece of machinery or equipment and, if attached, is readily removable without damage to the unit or to the realty. "Machinery and equipment" does not include junction boxes, switches, conduit and wiring, or valves, pipes, and tubing incorporated into fixed works, buildings, or other structures, whether or not such items are used solely or partially in connection with the operation of machinery and equipment, nor does it include items of tangible personal property such as power shovels, cranes, trucks, and hand or power tools used to perform the construction contract. A list of typical items regarded as machinery and equipment together with a list of typical items not regarded as machinery and equipment is set forth in Appendix C.

(7) **TIME AND MATERIAL CONTRACT.** "Time and material contract" means a contract under which the contractor agrees to furnish and install materials or fixtures, or both, and which sets forth separately a charge for the materials or fixtures and a charge for their installation or fabrication.

(8) **LUMP SUM CONTRACT.** "Lump sum contract" means a contract under which the contractor for a stated lump sum agrees to furnish and install materials or fixtures, or both. A lump sum contract does not become a time and material contract when the amounts attributable to materials, fixtures, labor, or tax are separately stated in the invoice.

### **(b) APPLICATION OF TAX.**

#### **(1) UNITED STATES CONSTRUCTION CONTRACTORS.**

**(A) Materials and Fixtures.** United States construction contractors are consumers of materials and fixtures which they furnish and install in the performance of contracts with the United States Government. Either the sales tax or the use tax applies with respect to sales of tangible personal property (including materials, fixtures, supplies, and equipment) to contractors for use in the performance of such contracts with the United States for the construction of improvements on or to real property in this state. The fact that the contract may provide principally for the manufacture or acquisition of tangible personal property is immaterial. The sales tax, but not the use tax, applies even though the contractor purchases the property as the agent of the United States.

**(B) Machinery and Equipment.** United States contractors are retailers of machinery and equipment furnished in connection with the performance of a construction contract with the United States Government. Tax does not apply to sales of machinery and equipment to United States contractors or subcontractors, provided title to the property passes to the United States before the contractor makes any use of it. Such sales are sales for resale, and the purchasing contractor may issue a resale certificate. A contractor who uses the machinery or equipment before title passes to the United States is the consumer of that machinery or equipment and either sales tax or use tax applies with respect to the sale to or the use by the contractor.

#### **(2) CONSTRUCTION CONTRACTORS OTHER THAN UNITED STATES CONSTRUCTION CONTRACTORS.**

##### **(A) Materials.**

1. In General. Construction contractors are consumers of materials which they furnish and install in the performance of construction contracts. Either sales tax or use tax applies with respect to the sale of the materials to or the use of the materials by the construction contractor.

2. When Contractor is Seller. A construction contractor may contract to sell materials and also to install the materials sold. If the contract explicitly provides for the transfer of title to the materials prior to the time the materials are installed, and separately states the sale price of the materials, exclusive of the charge for installation, the contractor will be deemed to be the retailer of the materials.

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In the case of a time and material contract, if the contractor bills his or her customer an amount for "sales tax" computed upon his or her marked up billing for materials, it will be assumed, in the absence of convincing evidence to the contrary, that he or she is the retailer of the materials.

If the sale occurs in this state, the sales tax applies to the contractor's (retailer's) gross receipts from the sale of the materials. If the sale occurs prior to the time the property is brought into this state, the contractor's (retailer's) customer is the consumer and his or her use (unless otherwise exempt) is subject to use tax measured by the sales price. The contractor must collect the use tax and pay it to this state.

**(B) Fixtures.**

1. In General. Construction contractors are retailers of fixtures which they furnish and install in the performance of construction contracts and tax applies to their sales of the fixtures.

2. Measure of Tax.

a. In General. If the contract states the sale price at which the fixture is sold, tax applies to that price. If the contract does not state the sale price of the fixture, the sale price shall be deemed to be the cost price of the fixture to the contractor.

b. Determining Cost Price. If the contractor purchases the fixtures in a completed condition, the cost price is deemed to be the sale price of the fixture to him or her and shall include any manufacturer's excise tax or import duty imposed with respect to the fixture prior to its sale by the contractor.

If the contractor is the manufacturer of the fixture, the cost price is deemed to be the price at which similar fixtures in similar quantities ready for installation are sold by him or her to other contractors.

If similar fixtures are not sold to other contractors ready for installation, then the cost price shall be deemed to be the amount stated in the price lists, bid sheets or other records of the contractor.

If the sale price cannot be established in the above manner and the fixture is manufactured by the contractor, the cost price shall be deemed to be the aggregate of the following:

- [1] Cost of materials, including such items as freight-in and import duties,
- [2] Direct labor, including fringe benefits and payroll taxes,
- [3] Specific factory costs attributable to the fixture,
- [4] Any manufacturer's excise tax,
- [5] Pro rata share of all overhead attributable to the manufacture of the fixture, and
- [6] Reasonable profit from the manufacturing operations which, in the absence of evidence to the contrary, shall be deemed to be 5 percent of the sum of the preceding factors.

Jobsite fabrication labor and its prorated share of manufacturing overhead must be included in the sale price of the fixture. Jobsite fabrication labor includes assembly labor performed prior to attachment of a component or a fixture to a structure or other real property.

3. Exceptions - Leased Fixtures. In some instances the construction contractor may furnish and install a fixture for a person, other than the owner of the realty, who intends to lease the fixture in place as tangible personal property as provided in Section 6016.3 of the Revenue and Taxation Code and pay tax measured by rental receipts.

In this case the construction contractor may take a resale certificate from the lessor at the time of the transaction and the sale to the lessor will be considered to be a sale for resale. The resale certificate should indicate that the fixture is purchased for resale by the purchaser as tangible personal property under Section 6016.3 of the Revenue and Taxation Code.

**(C) Machinery and Equipment.**

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## Proposed Amendments to Regulation 1521

1. In General. Construction contractors are retailers of machinery and equipment even though the machinery and equipment is furnished in connection with a construction contract. Tax applies to the contractor's gross receipts from such sales.

### 2. Measure of Tax.

a. In General. Tax applies to the gross receipts from the sale of machinery and equipment furnished and installed by a construction contractor. If the contract calls only for the furnishing and installation of machinery and equipment, tax applies to the total contract price less those charges excludible from gross receipts under Section 6012 of the Revenue and Taxation Code.

b. Lump Sum Contracts - Determining Gross Receipts. If the contract is for a lump sum and includes the furnishing and installation of materials, fixtures, and machinery and equipment, the gross receipts from the sale of the machinery and equipment shall be the price at which similar quantities ready for installation are sold at retail delivered in the market area where the installation takes place.

If there is no such retail price for the machinery and equipment, then the gross receipts shall be determined from the contracts, price lists, bid sheets, or other records of the contractor.

If the gross receipts cannot be established in the above manner and the machinery and equipment is manufactured by the contractor, the gross receipts from the sale shall be the aggregate of the following:

- [1] Cost of materials, including such items as freight-in and import duties,
- [2] Direct labor, including fringe benefits and payroll taxes,
- [3] Specific factory costs attributable to the machinery or equipment,
- [4] Any manufacturer's excise tax,
- [5] Pro rata share of all overhead attributable to the machinery or equipment, including overhead attributable to manufacturing, selling, contracting, and administration, and
- [6] Reasonable profit from the manufacture and sale of the machinery or equipment which, in the absence of evidence to the contrary, shall be deemed to be 5 percent of the sum of the preceding factors.

Jobsite fabrication labor and its prorated share of manufacturing overhead must be included in the sale price of the machinery or equipment. Jobsite fabrication labor includes assembly labor performed prior to attachment of a component or the machinery or equipment to a structure or other real property.

**(D) Cost Plus A Fee Contracts.** When a contractor enters into a construction contract for a cost plus a fee or time and materials plus a fee, whether the fee is a lump sum or a percentage of costs, the fee is not included in the measure of tax. When the contractor is the manufacturer of the fixtures or machinery and equipment, the "cost price" of the fixtures and the gross receipts from the sale of the machinery and equipment shall be determined in accordance with (B) and (C) above.

(3) MISCELLANEOUS SALES BY CONTRACTORS. In addition to sales of fixtures and machinery and equipment, tax applies to all retail sales by contractors of tangible personal property, including parts, supplies, tools, construction equipment, buildings severed or to be severed by the contractor, and furniture, including furniture sold with a building, even though the building is sold "in place."

(4) PERMITS. Contractors engaged solely in performing construction contracts which do not involve the sale and installation of fixtures and who do not also engage in business as sellers or retailers are not required to hold seller's permits. However, if a contractor is a seller or retailer because he or she makes sales of fixtures, materials, or machinery and equipment, or other tangible personal property either in connection with or as part of a construction contract, or otherwise, he or she is required to hold a seller's permit.

(5) SUPPLIES AND TOOLS FOR SELF-USE. Contractors are the consumers of supplies such as oxygen, acetylene, gasoline, acid, thread-cutting oil, and tools and parts for tools, which they use in their business, and the tax applies to the sale of such supplies and tools to contractors.

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## Proposed Amendments to Regulation 1521

### (6) EXEMPTION CERTIFICATES.

**(A) Resale Certificates.** Contractors holding valid seller's permits may purchase fixtures and machinery and equipment for resale by issuing resale certificates to their suppliers. They may not purchase materials for resale unless they are also in the business of selling materials.

A contractor cannot avoid liability for sales or use tax on materials or fixtures furnished and installed by him or her by taking a resale certificate from the prime contractor, interior decorators, designers, department stores, or others. However, under the circumstances described in subsection (b)(2)(B)3., a contractor may take a resale certificate for fixtures furnished and installed by him or her for a person other than the owner of the realty.

**(B) Exemption Certificates for Out-of-State Use.** Sales tax does not apply to sales of tangible personal property to a construction contractor who holds a valid California seller's permit when the property is used by the contractor outside this state in his or her performance of a contract to improve real property and as a result of such use the property is incorporated into and becomes a part of real property located outside this state. This exemption is available only if at the time of the purchase the contractor certifies in writing to the seller that he or she holds a valid California seller's permit (giving the number of that permit and identifying the property purchased) and states that the property will be used in the manner stated above. The certificate must be signed by the contractor or an authorized employee. Such a certification may appear in the body of a purchase order which bears the signature of the purchaser. Any certificate given subsequent to the time of purchase will not be recognized.

If the property purchased under a certificate is used by the contractor in any other manner or for any other purpose than stated in the certificate, the contractor shall be liable for sales tax as if he or she were a retailer making a retail sale of the property at the time of such use, and the sale price of the property to him or her shall be deemed the gross receipts from the sale.

**(C) Deductions for Tax-Paid Purchases Resold.** A contractor may claim a "tax-paid purchases resold" deduction for any property of which he or she is the retailer when he or she has reimbursed his or her vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the property, and has resold the property prior to making any use of it. In the event that the contractor sells short ends or pieces which are not used other than in severing them from larger units purchased by him or her and as to which he or she has paid sales tax reimbursement or use tax, he or she may claim the deduction for tax-paid purchases resold, but the amount of the deduction shall not exceed the price at which he or she sells such short ends or pieces.

### (c) PARTICULAR APPLICATIONS.

(1) **DRAPERIES AND DRAPERY HARDWARE.** Persons who contract to sell and install draperies including drapery hardware, such as brackets, rods, tracks, etc., are retailers of the items which they furnish and install. Tax applies to the entire contract price exclusive of the charge for installation which charge should be separately stated. Installers who furnish drapery hardware or other tangible personal property may accept resale certificates from department stores or other sellers to furnish and install the draperies and drapery hardware.

The department stores or other sellers furnishing resale certificates are required to pay the tax to the state upon their selling price of the draperies and drapery hardware, exclusive of installation charges. The installer should segregate his or her installation charge in order that the department store or other seller may properly segregate its charge attributable to installation for purposes of determining its taxable gross receipts.

(2) **PREFABRICATED CABINETS.** A cabinet will be considered to be "prefabricated" and a "fixture" when 90 percent of the total direct cost of labor and material in fabricating and installing the cabinet is incurred prior to affixation to the realty. In determining this 90 percent, the total direct cost of all labor and materials in fabricating the cabinet to the point of installation will be compared to the total direct cost of all labor and materials in completely fabricating and installing the cabinet. If more than one cabinet is fabricated and installed under the contract, each cabinet will be considered separately in determining whether the cabinet is prefabricated.

(3) **PREFABRICATED BUILDINGS.** Prefabricated units such as commercial coaches, house trailers, etc., registered with the Department of Motor Vehicles or the Department of Housing and Community Development, are

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**Proposed Amendments to Regulation 1521**

tangible personal property even though they may be connected to plumbing and utilities. A mobilehome which meets or is modified to meet, all applicable building codes and regulations and which is permanently affixed to realty, is an improvement to realty and is not personal property. A contract to furnish and install a prefabricated or modular building similar in size to, but which is not, a factory-built school building (relocatable classroom) is a construction contract whether the building rests in place by its own weight or is physically attached to realty. It is immaterial whether the building is erected upon or affixed to land owned by the owner of the building or is leased to the landowner or lessee of the land.

Generally, a contract to furnish and install a small prefabricated building, such as a shed or kiosk, which is movable as a unit from its site of installation, is a construction contract only if the building is required to be physically attached to real property by the seller, upon a concrete foundation or otherwise. The sale of such a unit to rest in place by its own weight, whether upon the ground, a concrete slab, or sills or piers, is not a construction contract even though the seller may deliver the unit to its site of use.

Prefabricated or modular buildings which are "factory-built housing" where permanently affixed to the realty are improvements to realty. The manufacturer of factory-built housing who contracts to furnish and install the factory-built housing manufactured by him or her is the consumer of the materials used in building and installing the factory-built housing and the retailer of the fixtures. Tax applies as provided in (b) above.

**(4) FACTORY-BUILT SCHOOL BUILDINGS.**

**(A) General.** On and after September 26, 1989, a contract to furnish and install a factory-built school building is not a construction contract but rather is a sale of tangible personal property.

**(B) Definitions.**

1. "Factory-built School Building." The term "factory-built school building" (relocatable classrooms) means and includes:

**Aa.** For the period September 26, 1989 through September 12, 1990, any building designed to be used as a school building as defined in Sections 39214 and 81165 of the Education Code and so used. A factory-built school building must be designed in compliance with state laws for school construction and approved by the structural safety section in the office of the State Architect. It must be wholly or substantially manufactured at an offsite location for the purpose of being assembled, erected, or installed on a schoolsite.

**Bb.** Effective September 13, 1990, any building which is designed or intended for use as a school building and is wholly or substantially manufactured at an offsite location for the purpose of being assembled, erected, or installed on a site owned or leased by a school district or a community college district. A factory-built school building must be designed and manufactured in accordance with building standards adopted and approved pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 of the Health and Safety Code and must be approved by the structural safety section in the office of the State Architect.

The term does not include buildings licensed by either the Department of Motor Vehicles or the Department of Housing and Community Development. The term also does not include prefabricated or modular buildings which are similar in size to, but which are not, "factory-built school buildings". It is immaterial whether the building is erected upon or affixed to land owned by the owner of the building or is leased to the landowner or lessee of the land.

2. "Consumer."

**Aa.** For the period September 26, 1989 through September 12, 1990, the term "consumer" as used herein means either (1) a school or a school district or (2) a contractor who purchases a factory-built school building for the purpose of fulfilling the requirements of an existing contract with a school or school district to furnish and install such building.

**Bb.** Effective September 13, 1990, the term "consumer" as used herein means either (1) a school district or a community college district or (2) a contractor who purchases a factory-built school building for the purpose of

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**Proposed Amendments to Regulation 1521**

fulfilling the requirements of an existing contract with a school district or a community college district to furnish and install such building.

**(C) Place of Sale.** The place of sale or purchase of a factory-built school building is the place of business of the retailer regardless of whether the sale of the building includes installation or whether the building is placed upon a permanent foundation.

**(D) Application of Tax.**

1. Tax applies to 40 percent of the sales price of the building to the consumer excluding any charges for placing the completed building on the site. The sales price of the building shall include amounts representing tangible personal property installed in the building by a subcontractor, whether prior to or after installation of the building at the site, provided such installation is called for in the prime contract for the building. A separate contract to furnish and install tangible personal property in a factory-built school building after installation of the building at the site is a construction contract and tax applies as in (b) above. Any contract or subcontract for site preparation (e.g., foundation) is a construction contract and tax applies as in (b) above.

2. The sale of a factory-built school building to a purchaser who will resell the building without installation is a sale for resale and the seller may accept a resale certificate from the purchaser. If the purchaser then sells to a contractor who has an existing contract to install the building on a school site, tax will apply as in (c)(4)(D)l. above. If tax has been paid on the purchase price of a factory-built school building which is subsequently resold for installation, a tax-paid purchases resold deduction may be taken as provided in Regulation 1701 (18 CCR 1701).

**(E) Exclusion Certificate.** For the period September 26, 1989, through September 12, 1990, if the purchaser certifies in writing to the retailer that the factory built school building purchased will be consumed in a manner or for a purpose entitling the retailer to exclude 60% of the gross receipts or sales price from the measure of tax and uses the property in some other manner or for some other purpose, the purchaser shall be liable for payment of tax measured by 60% of the sales price. For the above stated period, all retailers who make retail sales of "factory-built school buildings" claimed to be subject to tax measured by 40 percent of the sales price must obtain from the "consumer" a signed certificate substantially in the form set forth below.

**CLAIM FOR 60% EXCLUSION FROM TAX ON  
PURCHASE OF FACTORY-BUILT SCHOOL BUILDINGS  
(Sec. 6012.6, Rev. & Tax. Code)**

I hereby certify that the factory-built school building that I

\_\_\_\_\_

(Name of Purchaser-Consumer)

am purchasing under the authority of this certificate from

\_\_\_\_\_

(Name of Retailer)

will be used as a school building as defined in Sales and Use Tax Regulation 1521. My seller's permit number, if any, is

\_\_\_\_\_.

I further certify that I understand and agree that if the property purchased under the authority of this certificate is used by the purchaser for any purpose other than indicated above, the purchaser shall be liable for payment of tax to the State Board of Equalization at the time of such use measured by 60% of the sales price of the factory-built school building.

Signed by \_\_\_\_\_

(Name of Purchaser)

As: \_\_\_\_\_

(Owner, Partner, Purchasing Agent, etc.)

Date \_\_\_\_\_

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**Proposed Amendments to Regulation 1521**

cab or car	door safety edge on cab	pumps
car doors	door sills on cab	pushbuttons on cab
car platform and sling	electronic door protector	wire and piping (which are components of a fixture)
door hanger on cab	jack assembly	
door openers	motors	

Following are examples of components constituting "materials" when attached to realty:

car guides	hoistway door sills and jams	sound insulating panels on materials"
casing section of jack assembly	hoistway door supports	structural steel (unless part of the cab, car, or other "fixture")
guide rails	hoistway entrance	hoistway doors
pushbuttons on hoistway	valve strainer	wire and piping attached to "materials"
hoistway door frames	rail buckets	hoistway door safety edge
sill, struts		

Following are examples of components constituting parts of escalators or moving sidewalks which are fixtures:

staircase	chains	other operating mechanisms
moving sidewalk	sprockets	
moving handrails	motors	

(8) TELEPHONE SWITCHBOARDS AND INSTRUMENTS. Telephone switching equipment installed in a building specifically designed to accommodate the equipment or attached to a building or structure in a manner such that its removal would cause damage to the equipment or building in which it is installed will be considered to be "fixtures" under paragraph (a)(5) of this regulation.

Telephone handsets, modular switching equipment and standardized, off-shelf, general purpose switching equipment sold for use in general purpose office buildings constitute machinery and equipment under paragraph (a)(6) of this regulation. Handsets, modular switching equipment and standardized equipment were previously classified as fixtures.

This change in classification shall be applied prospectively only with respect to construction contracts entered into on and after July 1, 1988, by contractors other than United States construction contractors.

(9) DEEP-WELL AGRICULTURAL PUMPS. A deep-well agricultural pump is tangible personal property if installed so that it rests in position by force of gravity and is not otherwise affixed to the land.

The pump is a fixture if:

(A) It is affixed to the land such as by concrete, bolts or screws,

(B) It is physically connected to an irrigation system such as by pipes or couplings so as to become an integral part of the system, or

(C) It is enclosed by a pump house or other building or structure .

(10) REMOTE CONTROL GARAGE DOOR OPENERS. Remote control garage door opening units are fixtures. Portable transmitter units furnished pursuant to a construction contract are deemed to be fixtures and are taxable as provided in subdivision (b)(2)(B). Sales of portable transmitter units not a part of a construction contract, as, for example, sales of replacement units, are retail sales of tangible personal property and subject to tax as such.

(11) EXCESS REIMBURSEMENT The excess tax reimbursement provisions of Regulation 1700 apply to construction contractors.

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**Proposed Amendments to Regulation 1521**

(12) ON-PREMISE ELECTRIC SIGNS

(A) An on-premise electric sign is any electrically powered or illuminated structure, housing, sign, device, figure, statuary, painting, display, message, placard, or other contrivance or any part thereof affixed to real property and intended or used to advertise, or to provide data or information in the nature of advertising, for any of the following purposes: 1) To designate, identify, or indicate the name or business of the owner or occupant of the premises upon which the advertising display is located, or 2) To advertise the business conducted, services available or rendered, or the goods produced, sold, or available for sale, upon the property where the advertising display has been erected.

(B) **Application of Tax.** An on-premise electric sign is a fixture and tax applies to the sale price of the sign. Notwithstanding the provisions of 1521(b)(2)(B), operative October 1, 2000, if the contract does not state the sale price of the sign, tax applies to 33 percent of the contract price of on-premise electric signs that are furnished and installed by the seller. "Contract price" includes charges for materials, fabrication labor, installation labor, overhead, profit, and other charges associated with the sale and installation of the sign. If a contract provides that a contractor is to install an on-premise electric sign furnished by a third party, the charges for installation are not taxable. If a seller furnishes but does not install an on-premise electric sign, the seller is a retailer of the sign and tax applies to the total contract price.

Separately stated charges for transportation are subject to tax as defined in Regulation 1628, *Transportation Charges*.

(13) SOLAR CELLS, SOLAR PANELS AND SOLAR MODULES. A contract to furnish and install a solar energy system onto a structure or realty is a construction contract which involves furnishing and installing both materials and fixtures. A solar energy system is defined as any solar collector or other solar energy device that provides for the collection and distribution of solar energy and, where applicable, the storage of solar energy.

(A) Materials. Photovoltaic (PV) cells, solar panels and solar modules, including both solar thermal panels and solar electric PV panels, are considered materials when they function in the same manner as other materials such as roofing, windows, or walls and are incorporated into, attached to, or affixed to real property and, as such, lose their identity to become an integral and inseparable part of the real property. Examples of these types of solar panels include, but are not limited to, PV integrated skylights, PV panels used to function as a roof on a parking lot shade structure, and PV integrated roofing tiles.

Other materials include, but are not limited to, wiring, wiring harnesses, strapping, piping, and mounting systems.

(B) Fixtures. Photovoltaic (PV) cells, solar panels and solar modules, including both solar thermal panels and solar electric PV panels, are considered fixtures when they are accessory to a building or other structure and do not lose their identity as accessories when installed. Examples of these types of solar panels include, but are not limited to, rack mounted solar panels installed on roofs and solar panels used in free-standing solar arrays.

Other items included in the solar energy system which are considered fixtures include, but are not limited to, terminal boxes, DC and AC disconnect boxes, inverters, transformers, batteries and pumps.

Contractors furnishing and installing solar energy systems that include fixtures are required to hold seller's permits as described in subdivision (b)(4).

*Appendix A* The following is a list of typical items regarded as materials:

Asphalt	Lime	Roofing
Bricks	Linoleum	Sand
Builders' hardware	Lumber	Sheet metal
Caulking material	Macadam	Steel
Cement	Millwork	Stone
Conduit	Mortar	Stucco
Doors	Oil	Tile

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**Proposed Amendments to Regulation 1521**

Ducts	Paint	Wall coping
Electric wiring and connections	Paper	Wallboard
Flooring	<u>Photovoltaic (solar) integrated</u>	Wallpaper
Glass	<u>roofing tiles and skylights</u>	Wall-to-wall carpeting (when affixed to the floor)
Gravel	Piping, valves, and pipe fittings	Weather stripping
Insulation	Plaster	Windows
Lath	Power poles, towers, and lines	Window screens
Lead	Putty	Wire netting and screen
	Reinforcing mesh	Wood preserver

*Appendix B* The following is a list of typical items regarded as fixtures:

Air conditioning units	Furnaces, boilers, and heating units
Awnings	Lighting fixtures
Burglar alarm and fire alarm fixtures	Plumbing fixtures
Cabinets, counters, and lockers (prefabricated)	Refrigeration units
Cranes (including moving parts of cranes) affixed or annexed to a building, structure or fixed work <sup>1</sup>	Signs
Electric generators (affixed to and accessory to a building, structure or fixed works)	Television antennas
Elevators, hoists, and conveying units	Transformers and switchgear
	Vault doors and equipment
	Venetian blinds

*Appendix C* The following are lists of typical items regarded as:

<i>Machinery and Equipment</i>	<i>Not Machinery or Equipment</i>
Drill presses	Fixtures and materials as defined in this regulation
Electric generators (unaffixed, or, if affixed, which meet the requirements of subparagraph (a)(6))	Wiring, piping, etc., used as a source of power, water, etc., for machinery and equipment
Lathes	Radio transmission antennas
Machine tools	Large tanks (i.e., over 500 barrel capacity)
Printing presses	Fire alarm systems
	Street light standards
	Cooling towers other than small prefabricated cooling units

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**Initial Statement of Reasons (Gov. Code § 11346.2, subdivision (b))**  
**Overview/Non-Controlling Summary**

Regulation 1521, *Construction Contractors*, regarding the classification of solar cells, solar panels, and solar modules as materials or fixtures.

Regulation 1521 is proposed to be amended to clarify the classification of solar cells, solar panels, and solar modules either as materials or fixtures.

**Specific Purpose**

The purpose of the proposed regulation is to interpret, implement, and make specific Revenue and Taxation Code sections 6009, 6012, 6015 and 6016. The proposed regulation adds guidance to Regulation 1521 by explaining the application of the Sales and Use Tax Law to the sale and installation of solar cells, solar panels, and solar modules. The guidance provided explains that photovoltaic cells, solar panels, and solar modules are considered materials when they function in the same manner as other materials such as roofing, windows, or walls and are incorporated into, attached to, or affixed to real property and as such lose their identity by becoming an integral and inseparable part of the real property. Other types of photovoltaic cells, solar panels, and solar modules however are considered fixtures when they are accessory to a building or other structure and do not lose their identity as accessories when installed.

**Necessity**

This regulation is necessary to provide guidance to assessors and taxpayers affected by these statutes. Based upon submissions from the California Solar Energy Industries Association, it has come to the attention of the Board of Equalization that there is uncertainty within the solar energy industry regarding the application of tax to construction contracts providing for the furnishing and installation of photovoltaic systems. The California Solar Energy Industries Association expressed concern that Regulation 1521 was not sufficiently clear in its explanation of how tax applies to these construction contracts. Solar energy is an emerging industry, and, given the increased emphasis on alternative energy sources, it is anticipated that there could be a substantial increase in construction contracts involving solar power. Accordingly, this amendment is necessary to explain how the general rules regarding tax and construction contracts apply to specific examples involving construction contractors furnishing and installing solar cells, solar panels and solar modules, in order to ensure more accurate reporting of sales and use tax liabilities.

**Factual and Evidentiary Basis**

Regulation 1521 discusses the application of sales and use tax to construction contractors. The impetus for the amended regulation is reported industry uncertainty regarding the application of the sales and use tax to solar panels and photovoltaic cells when they are furnished and installed as part of a construction contract

Subdivision (c) (13) defines a solar energy system construction contract. Subdivision (c)(13)(A) defines “materials” used in solar energy systems. Subdivision (c) (13) (B) defines “fixtures” used in solar energy systems. The guidance provided in the proposed amendment is based upon Board staff legal and appraisal expertise.

Pursuant to Government Code section 11346.5, subdivision (a) (8), the Board of Equalization finds that the adoption of the proposed regulation will not have a significant adverse economic impact on private businesses or persons. The proposed amendment does not effect a change in the Sales and Use Tax Law, but instead merely provides clarification and explanation with respect to existing law and offers specific guidance on the application of such existing law to the solar energy industry. The regulation is proposed to interpret, implement, and make specific the authorizing statutes. These changes provide guidance with respect to the interpretation and administration of the current sales and use tax laws. Therefore, in its expert opinion, the Board has determined that these changes will not have a significant adverse economic impact on private businesses or persons.

## **Regulation History**

**Type of Regulation:** Sales and Use Tax  
**Regulation:** 1521  
**Title:** Construction Contractors  
**Preparation:** Lynn Whitaker/Lynda Cardwell  
**Legal Contact:** Robert Tucker/Sharon Jarvis

Proposed amendments provide that solar panels and photovoltaic cells are “materials” when they function in the same manner as other materials such as roofing, windows, or walls and are incorporated into, attached to, or affixed to real property and, as such, lose their identity to become an integral and inseparable part of the real property.

### **History of Proposed Regulation:**

June 1, 2007: Public Hearing  
April 14, 2007: Beginning of public comment period  
April 13, 2007: Notice of public hearing published in California Regulatory Notice Register, Register 2007, No. 15-Z, e-mailed and US mail to interested parties.  
February 1, 2007: Business Taxes Committee, Board authorized publication of proposed regulation (Vote 3-2)  
October 5, 2006: 2<sup>nd</sup> Interested Parties meeting  
August 22, 2006: 1<sup>st</sup> Interested Parties meeting  
June 6, 2006: Topic placed on Business Taxes Committee calendar  
May 17, 2006: Chief Counsel Matters, referred to Business Taxes Committee (Vote 5-0)

Sponsor: California Solar Energy Industries Association

Support: NA  
Oppose: NA