

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Petition for Redetermination)
Under the Sales and Use Tax Law of:)
PFT / ALEXANDER SERVICE, INC.,) Account Number: SR Y AA 99-113182
Case ID 400767
Petitioner) Signal Hill, Los Angeles County

Type of Business: Distributor of liquid measuring meters

Audit Period: 4/1/03 - 3/31/06

<u>Protested Item</u>	<u>Disputed Measure</u>
Unreported purchases of fixtures consumed in U.S. Government construction contracts	\$512,950

	<u>Tax</u>
As determined	\$72,929.34
Adjustment: Appeals Division	<u>-2,946.31</u>
Proposed redetermination	\$69,983.03
Amount concurred in	<u>-30,229.40</u>
Protested	<u>\$39,753.63</u>
Proposed tax redetermination	\$69,983.03
Interest through 6/30/09	<u>29,970.39</u>
Total tax and interest	\$99,953.42
Payments	<u>-3,296.39</u>
Balance due	<u>\$96,657.03</u>

Monthly interest beginning 7/1/09 \$444.58

UNRESOLVED ISSUE

Issue: Whether petitioner made an exempt sale of hydraulically operated marine fuel loading arms (fuel loading arms) to the U.S. Government. We conclude that the fuel loading arms are fixtures and that petitioner therefore owes use tax as the consumer of such property in the performance of a construction contract with the U.S. Government.

This appeal involves the Sales and Use Tax Department's (Department) assessment of use tax on petitioner's purchase of five fuel loading arms from a vendor in Texas. The vendor shipped the fuel

1 loading arms to San Diego, California, where petitioner furnished and installed them on a pier at the
2 Point Loma Fuel Farm, pursuant to a contract with the U.S. Government.

3 A fuel loading arm delivers fuel, liquids, cereal, and other products from tanks or silos into
4 ships. The fuel loading arms were constructed with stainless steel arms, hoses, a hydraulic cylinder,
5 and counterweights, which allowed them to swivel and extend, similar to a crane. The installation
6 process involved bolting the base of the fuel loading arms to the pier, and attaching flanges at the
7 bottom of the fuel loading arms to distribution pipes that ran under the pier, and connected to nearby
8 tanks and silos. The fuel loading arms can be disconnected by removing the bolts that attach them to
9 the pier, and disconnecting the distribution pipes from the flanges. After installation, the fuel loading
10 arms were used by U.S. Government employees to dispense the contents of the tanks and silos into
11 tankers docked at the pier.

12 The Department concluded that the fuel loading arms are fixtures because California Code of
13 Regulations, section (Regulation) 1521, subdivision (a)(5), defines fixtures as *accessories* that are
14 attached to structures (e.g., piers) that do not lose their identity as accessories once attached. The
15 Department also notes that Appendix B of Regulation 1521 specifically includes cranes that are affixed
16 to buildings or structures as items typically regarded as fixtures. The Department argues that since the
17 fuel loading arms were attached to a structure (the pier), and operate similar to cranes (by extending
18 and swiveling), the fuel loading arms should be considered fixtures as well. The Department also
19 notes that in Business Taxes Law Guide (BTLG) annotation 190.2100 (5/13/54), the Board's legal staff
20 has concluded that pumping equipment is regarded as a fixture, unless it is installed in such a manner
21 as to remain tangible personal property.

22 Petitioner notes that Regulation 1521, subdivision (a)(6), defines machinery and equipment as
23 property that is intended to be used in the performance of services or for other purposes that are not
24 essential to the fixed works or a building or structure, which may be incidentally attached to the realty
25 without losing its identity, and which is readily removable without damage to realty. Petitioner argues
26 that the fuel loading arms fit this description, and are different than the fixture items listed in Appendix
27 B of Regulation 1521 (including cranes), since they are not an essential part of a structure, can be
28 easily removed, and were not intended as improvements to realty. In the alternative, petitioner argues

1 that since title to the fuel loading arms passed to the U.S. Government prior to installation, the sale was
2 exempt.¹

3 Fixtures generally perform functions that are essential and necessary to the use of the realty
4 itself (i.e., are a functional part of the realty). Machinery and equipment perform functions that are
5 independent of the use of the realty (i.e., have independent significance), such as producing,
6 manufacturing, or processing tangible personal property. Thus, if the fuel loading arms were essential
7 to the use and operation of the tanks and silos (realty), then they would be considered fixtures that
8 petitioner consumed in the performance of a construction contract with the U.S. Government, and
9 petitioner would owe use tax in accordance with Revenue and Taxation Code section 6202, since the
10 fuel loading arms were purchased in Texas, for use here. However, if the fuel loading arms were
11 machinery and equipment, or otherwise were not improvements to realty, then petitioner would be
12 regarded as having purchased them for resale in an exempt sale to the U.S. Government.

13 The fact that the fuel loading arms could be (or were) removed or repositioned on the pier does
14 not mean that they were not improvements to realty. In order to consider an item as an improvement to
15 realty, it is sufficient that the item appears to have been intended to remain where placed until it is
16 worn out, replaced by another item, or until the purpose to which the real property is devoted has been
17 accomplished. (*Seatrains Terminals of California v. County of Alameda* (1978) 83 Cal.App.3d 69, 78-
18 79.) Here, the fuel loading arms were a necessary and integral part of the operation of transporting the
19 contents of the tanks and silos into tankers docked at the pier. Moreover, as a practical matter, it would
20 make no sense to remove the fuel loading arms except for repairs, given the time and expense of doing
21 so, and the fact that all operations would have to be suspended until a replacement unit was installed.
22 Based on the evidence presented, we find that the fuel loading arms were essential and necessary to the
23 use and operation of the realty, and that they did not produce, manufacture, or process the contents of
24 the tanks or silos. We therefore conclude that the Department properly classified the fuel loading arms
25 as fixtures rather than as machinery and equipment. Accordingly, since petitioner consumed those

27 ¹ Petitioner claims that the Navy accepted risk of loss and transfer of title prior to installation. However, except where title
28 transfers outside California, which was not the case here, transfer of title to the U.S. Government is not relevant where a
contractor furnishes and installs materials or fixtures pursuant to a U.S. Government construction contract.

1 fixtures in the performance of a U.S. Government construction contract, we find that petitioner owes
2 use tax on its purchase price of the fuel loading arms.

3 **RESOLVED ISSUE**

4 In its petition for redetermination, petitioner asserted it was entitled to a bad debt deduction.
5 Thereafter, the Department completed a reaudit which allowed a bad debt deduction of \$35,763.

6 **OTHER DEVELOPMENTS**

7 None.

8
9
10 Summary prepared by Rey Obligacion, Business Taxes Specialist III

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28