

**150.0000 BUILDINGS AND OTHER PROPERTY AFFIXED TO REALTY—
Regulation 1596**

See also Construction Contractors.

150.0020 Appliances Sold with Realty. A refrigerator, gas range and washing machine sold with a house by a contractor are subject to tax measured by the contractor's gross receipts from the sale of the appliances. It is immaterial that the cost of the appliances is included in the real estate mortgage, that the appliances are installed before the buyer receives the beneficial title to the property, that the appliances are firmly attached to the realty by gas pipes or rubber water connections or that the spaces between cabinets are specifically designed to accommodate the particular appliances. 7/10/58.

150.0060 Buildings—to be Removed by Purchaser. A sale of a building affixed to land owned by the seller is not a sale of tangible personal property even though the purchaser is to remove the building after the sale. If the seller is to remove the building, however, the sale is a sale of tangible personal property. Opinion of the Attorney General No. 67/218; 9/6/68; 9/12/68.

150.0080 Cabinets, etc. Cabinets prefabricated by a contractor are sold as a part of the realty if installed in his house constructed by him on his lot prior to sale. However, if the contractor installs such prefabricated cabinets in a house which he has agreed to construct on a lot sold by him, the cabinets are sold as a part of the realty only if the purchaser does not have legal or equitable title to the lot at the time of the installation. If pursuant to an agreement to sell a house the contractor includes a refrigerator, stove, washer or other equipment not built-in the sales tax applies to the fair retail sale price of the equipment. 7/15/57.

150.0100 Christmas Trees. A retail sale of tangible personal property occurs when an owner or operator of a Christmas tree farm allows a consumer to come onto the farm and, for a price, to cut and remove Christmas trees. This is in accord with the California Commercial Code section 2107(2) which provides:

“A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subdivision (1) [minerals or a structure] or of timber to be cut is a contract for the sale of goods within this division whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at this time of contracting, and the parties can by identification effect a present sale before severance.” 11/22/65.

150.0125 Draperies Sold with Residence. A retailer sells and installs draperies to a construction contractor who will resell the draperies together with the home. The drapery retailer is making a retail sale of the draperies. Since the sale of the

draperies in place by the contractor is not a sale of tangible personal property under Regulation 1596, removal of the draperies is not contemplated by either the seller (contractor) or the buyer. 4/13/81; 7/10/96.

150.0140 Earth—Severance. The sale of earth is not taxable when a landowner gives permission to have the earth removed from his land, in which case the earth becomes personal property by the act of severance performed by the purchaser. 8/18/64.

150.0160 Electrical Appliances. Electrical appliances such as a range and refrigerator installed in a house do not become a part of the realty but retain the character of personalty. Accordingly, upon a sale of the house, including the range and refrigerator, the sales tax applies to the sale of such personalty, irrespective of whether the sales price of the range and refrigerator are separately stated. 8/26/53.

150.0180 Electrical Systems. The sales by a power company of two “electric systems,” including transmission lines, substations, distribution lines, service lines, and meters constitute sales of real property to which the sales tax does not apply. The transmission and distribution lines are exempt by virtue of section 6016.5, and such items as pole transformers and residence meters which are attached to the realty and become an integral part of the transmission and distribution system cannot be segregated and treated as tangible personal property. 6/24/69.

150.0200 Fall-Out Shelters. Sales of fabricated steel shelters to persons who install them are retail sales and taxable as such. 11/22/61.

150.0220 Fixtures Included in the Sale of a Business. When the sale of a business includes buildings and land the following items are part of the realty, if attached:

- (1) Planers and molding machines which are heavy equipment used in a sawmill,
- (2) Carriage and circular saw, used in a sawmill for the first cutting of the logs,
- (3) Compressor and heavy duty electric motor used in a grocery store in connection with a walk-in beer cooler,
- (4) Service station hydraulic hoist. A small one-half horsepower bench grinder is considered as tangible personal property. 9/10/57.

150.0260 Furnished Apartment Houses. The sale of a furnished apartment house involves the sale of tangible personal property subject to sales tax. What constitutes personalty rather than realty with respect to the usual items in such a transaction is summarized below:

Curtain rods, drapery rods, venetian blinds, and window shades are regarded as part of the realty.

Attached wall beds are realty.

Wall-to-wall carpeting and pads tacked down are realty; untacked rugs or carpets are personalty.

Laundry platform and attached clothes line on roof of property are realty.

An intercommunicating system is realty.

Gas stoves are personal property.

Hot water heater and tank is realty.

Fire hose is personalty while racks holding same are realty.

Elevators are realty.

In-a-door beds, if affixed to door or walls are realty, but if movable from room to room, are personalty.

Electric clocks are personalty.

Neon sign is realty. 7/9/53.

150.0278 In-Place Sale of Machinery and Equipment. A manufacturing company who leases a building and owns pieces of machinery attached to the leased realty sold its assets. If, under the term of the lease, the lessee may not remove the machinery and equipment at the end of the lease term and must leave those items for the lessor such that the lessor effectively owns those items, the machinery and equipment would be regarded as real estate. However, the fact that the lease allows for removal of the machinery (upon repair of any damage to the real property caused by the installation or removal of the machinery or equipment) precludes any claim of conversion to realty by virtue of permanent attachment. Accordingly, the sale in place of machinery and equipment would be subject to tax. The classification of property in Regulation 1521 is to be used as a guide in determining whether the property is “machinery and equipment”. 1/3/91. (Am. 2000–2).

150.0290 Lease of a Steam Generating Plant. The sale of a steam generating plant which is a building or structure of a fixed work under Regulation 1521, when severance is not contemplated, is a sale of an interest in realty even though the land is not sold. Following the sale, the facility is leased. The facility does not lose its character as an improvement to realty under the lease contract. It is true that the facility incorporates within it items which would be classified as “fixtures” under Regulation 1521. Regulation 1596(c) applies to transfers of fixtures, but the lease contract involves the lease of a building, not merely the sale or lease of fixtures. Under Regulation 1660(d)(7), leased fixtures are classified as

“tangible personal property” unless the lessor of the fixtures is also the lessor of the realty. Here the realty is the structure, and the fixtures in question are attached to the realty. Under these circumstances, the lease is a lease of realty, not tangible personal property, and tax does not apply. 12/8/89.

150.0298 Leased Premises—Sale of Machinery and Equipment. Company A is the lessor to Company B of a building and of certain machinery and equipment installed therein. Pursuant to the lease agreement concerning the machinery and equipment, B was authorized to remove items of equipment (with title passing to B) provided equipment of equal value was substituted (with title passing to A) for the equipment removed.

The sale by A to B was sale of tangible personal property because removal of the property was contemplated at the time of the sale. Accordingly, the sale was a sale of tangible personal property notwithstanding the fact that the property was never classified as “leased fixtures” pursuant to section 6016.3 while in place and under lease. The property was not “leased fixtures” because the lessor of the property was also the lessor of the building. It appears that the sale of this property did not qualify as an “occasional sale.”

The sale by B of the replacement property to A was also a sale of tangible personal property. The property in question appears to have been machinery and equipment. B sold the equipment to A and installed the equipment. This was a sale of tangible personal property to be installed and not a sale of property “in place.” The sale of the property by B to A was a taxable sale of tangible personal property notwithstanding the fact that the property never became “leased fixtures” under section 6016.3. 10/26/79.

150.0300 Leased Premises—Sale of Machinery, Equipment and Fixtures Installed on. Although a lessee is permitted or required to remove fixtures upon terminating an oil lease the transfer of casing, tubing, derricks, pipes, valves, fittings and other appurtenances attached or affixed to the property constitute fixtures and are nontaxable, providing they are transferred with a lease of indeterminate duration. 11/8/68.

150.0340 Leased Premises—Sale of Machinery, Equipment and Fixtures Installed on. Gross receipts from sale of machinery and equipment installed by a lessee on leased premises are taxable where the machinery and equipment are classified under the lease agreement as personal property which the lessee has the right to remove from the premises. The sale of the machinery and equipment to the buyer and the assignment of the lease by the lessee with the consent of the lessor give the buyer all the rights the lessee had under the lease, including ownership of machinery and equipment on the premises. 10/14/69.

150.0380 Leased Premises—Sale of Machinery, Equipment and Fixtures Installed

on. The sale of affixed machinery and equipment by a lessee in connection with the sale of a leasehold to an assignee constitutes a taxable sale of personalty, when the lessee has the present right to remove the property, or when the fixtures are trade fixtures. The tax applies even if the assignee does not intend to sever the property. 6/21/55.

150.0385 Lessor and Lessee Sales of Fixtures.

(1) The sale of a fixture by a lessee of realty to the lessor/owner is not taxable unless the contract of sale contemplates removal by either party.

(2) The sale of a fixture by a lessor/owner of realty to the lessee is not taxable unless the contract of sale contemplates removal by either party.

(3) The sale of a fixture by the lessee of realty to a successor lessee of the realty is taxable if both parties have the present right of removal or if the contract of sale contemplates removal by either party.

(4) The sale of a fixture by the lessor of a fixture to the lessee of the fixture is taxable as a sale of tangible personal property if the lessor has the right to remove the fixture on breach or termination of the lease and the lessor is not also the lessor of the realty. The transaction is also taxable if the contract of sale contemplates removal by either party. 3/18/75.

150.0386 Lease of Land and Buildings. A is the lessee of land and building and operates a bowling alley at the site. A purchased the business from B, the previous lessee of the site. The purchase included the liquor license, fixed assets, inventory, bowling lanes and equipment, office and bar furniture and equipment, stock in trade including resale merchandise and leasehold interest, etc. Pursuant to the lease agreement with the lessor C, B covenanted that “the fixtures, furniture, and equipment listed above shall remain on the premises during the entire period covered by the present lease and its extensions, and that, as and when, any of the fixtures and equipment installed in or upon the demised premises shall become obsolete, lessee shall replace the same” B claims that it did not have the present right to remove the fixtures at the time of their sale since it was obligated to maintain them on the site pursuant to the lease.

It is clear that the owner of the real property, C, regarded B as the owner of the fixtures and equipment. The fact that B has agreed to keep the property in place during the term of the lease does not negate a conclusion that B had the present right to remove the items within the meaning of Regulation 1596. The lessor’s “interest” in the property arose not from the law concerning accession to real property but from B’s contractual undertaking to have the items in place during the term of the lease. Under the lease agreement, B has undertaken to keep on the

premises office furniture and equipment and other items in no way affixed to the real property. Clearly the sale of these items was subject to tax despite the undertaking of B not to remove them from the premises. This conclusion should not differ with respect to items which may have been affixed to the realty when the items constituted trade fixtures and were treated by the lessor and the lessee as property belonging to, and alienable by, the lessee. 8/20/76.

150.0395 Oil Well Pumping Unit. The in-place sale by an owner of the land of an oil well pumping unit whose parts are attached to realty by concrete, bolts, screws, etc., is not taxable when removal of the pumping unit is not contemplated by the contract of sale.

However, if some of the items of the unit such as the motor or pumping unit are not attached to the realty but rather resting in place solely by force or gravity, the sale of such items would be subject to sales tax. 6/3/88.

150.0400 Outdoor Advertising—Cutouts. “Cutouts” are plywood embellishments attached to billboards to increase the advertising space. These consist of letters or forms on which are painted pictorial representations, are moved from one billboard to another, and junked at the end of a particular advertising campaign. If the billboard owner passes title to or the right of possession of the cutouts to the advertiser, tax applies to the charges for materials contained in the cutouts together with the charges for fabrication labor in manufacturing them. If title to or the right of possession of the cutouts does not pass to the advertiser, then the billboard owner is the consumer of the materials contained in the cutouts. 7/1/59; 7/11/90.

150.0420 Outdoor Advertising—Signs. The sales of advertising structures in place, whether erected on leased land or on property owned outright, constituting real property at the time of the sale are not subject to either State or local sales tax, but a sign affixed to a building in such a manner that it is readily removable as a unit is treated as personal property, if, at the time of the sale, the owner is a lessee of the building and has the present right of removing the sign. 5/23/60.

150.0460 Portable Classrooms. Portable classrooms are required by contracts of sale to be built at “depot” locations on a mass production basis. Unlike other portable classrooms placed on permanent foundations similar to those of houses, the foundations of the portable classrooms under the contracts are designed to support the classrooms during construction only. Completed structures are removed from the depot side by the school district to the classroom site. Because of lack of permanency of the foundations and of the school district’s responsibility to remove the finished classrooms, the contracts are classified as contracts for the sale of tangible personal property rather than contracts to improve real property,

and if a sufficient number of sales are made, are taxable sales of personal property. 11/17/69.

150.0505 Relocatable Classrooms. After a relocatable classroom is affixed to land it is considered real property. The sale of relocatable classroom buildings in-place while subject to a pending lease is not a sale of tangible personal property unless the seller-lessor intends to sever those buildings from the land. 8/21/90.

150.0520 Removal of a House. If a buyer purchases a house or other structure affixed to land for removal by him, but prior to removal resells it to a third party pursuant to an agreement which provides that the third party or someone hired by him is to remove the structure from the land, the buyer's sale of the house or other structure to the third party is a sale of real property since at the time of his sale the structure is still affixed to the land. 9/10/69.

150.0528 Removal of Sand from Land by Lessee. When a lessee is granted permission to sell river sand, no sales tax is involved between the lessor and the lessee. However, if the lessee removes the sand and sells it, the lessee is making a sale of tangible personal property and the sale is subject to tax.

If the lessee grants an option to a contractor pursuant to which the contractor will provide excavating, transporting equipment, and digging the sand from the river bottom, and if the lessee sells sand, the gross receipts of the lessee will be subject to the tax. However, if the lessee merely assigns his right to remove sand, the removal of the sand by the assignee would be in the same status as removal of the sand by the lessee, and the tax would not apply. 1/24/62.

150.0535 Right of Removal. Company A owns and operates a plant which produces and circulates heated and chilled water to a hotel. The plant is on land owned by the hotel. The contract between A and the hotel runs for 25 years and the hotel has the option of extending for five terms of five years each. The hotel also has the right to purchase the plant at the expiration of the original 25 year term.

The plant was sold in place by A to Company B. A continued to operate the plant.

The sale of the plant constituted a sale of realty. The affixed property was sold in place. Neither A nor B contemplated removal of the property, and neither person had any present right of removal of the property either by the express terms of the lease agreement or by operation of law. 4/4/72.

150.0540 Right to Remove from realty, sale or grant of, does not constitute a sale of personalty and charge made for right is not taxable. 4/11/50.

150.0550 Rock, Sand and Gravel Affixed to Realty. In general the retail sale of rock, sand and gravel, previously removed from the ground, is subject to tax. However,

the sale of rock, sand or gravel in place is not a sale of tangible personal property. Therefore, where the owner of the land severs the material himself and consumes it in fulfilling a construction contract, or where the owner grants the right to another to remove the rock, sand and gravel from the ground, the transaction is not subject to the sales tax. 4/11/50.

150.0551 Sale of Central Cooling and Ice Storage Facility. The sale, in place, of a central cooling and ice storage facility (part of the cooling system), is exempt from the sales tax when there is no contemplation that either the seller or buyer will remove the facility, or any portion of the facility, from the realty. The only tax due is the tax paid at the time of construction. 4/23/91

150.0552 Sale of a Gasoline Service Station. The assets of a gasoline service station being sold consist of underground storage tanks, pumps and canopies. The pumps are mounted to a concrete ‘‘island’’ and the canopies are mounted to vertical pipes which are imbedded in the earth. Tax applies as follows:

If the seller owns both the land and the pumps, tanks and canopies, the sale of the tanks and canopies is not taxable unless the contract provides that the seller will sever these items. With respect to the pumps, if the contract provides that the pumps are to be removed by either the seller or the purchaser, the gross receipts from the sale of the pumps are taxable. Otherwise, the sale of the pumps is not taxable.

A different rule applies to the pumps if the seller is leasing the land. Since pumps are trade fixtures under section 1019 of the Civil Code, which gives the seller-lessee the right to remove the pumps, the sale of the pumps under these circumstances is taxable. 7/24/91.

150.0560 Swimming Pools. Sales of prefabricated aluminum swimming pools installed by the seller above ground on a base of sand are retail sales of tangible personal property. The price for on-site assembly and fabrication is included in the gross receipts although the price for services used in installing the pools is excludable. 8/9/68.

150.0580 Standing Timber. A contract to sell standing timber in which the purchaser is required to sever such timber at a given price per unit is regarded as a sale of personal property. If, however, purchaser is merely granted an option to sever the timber and is not required to make the severance, the contract is for the sale of an interest in realty not subject to sales tax. If contract is for the sale of personal property and the purchaser proposes to cut the timber and sell it to a lumber mill, the sale would be exempt as a sale for resale. 12/31/53.

150.0620 Transfer of Building in Place. The transfer (sale) of land to one entity and the building to another entity does not result in a sale of tangible personal property

when the building is affixed to the land. The transfer of the building is treated as a sale of personal property and taxable only when the building is to be physically severed by the seller at the time of the sale. If the building is to be severed by the purchaser at the time of the sale, it is real property and the sale is not subject to tax. 9/7/93.

[150.0628](#) **Transfer in Place of Concrete Batch Plants.** Where concrete batch plants are located on leased property and the lease states that the batch plants are to remain the property of the lessee and the lessee would remove them at the end of the lease, the batch plants are considered tangible personal property. Thus, the sale is subject to tax even though removal is not contemplated. See *Standard Oil Co. v. State Board of Equalization*, 232 Cal.App.2d 91. 3/24/92.

[150.0680](#) **Water Meters.** A sale of water meters in place as part of the sale of a private water system is a sale of tangible personal property when the meters are on land not owned by the seller, and subject to tax. 9/26/56.

[150.0700](#) **Water Meters.** Sales of water meters in place are sales of real property and not subject to tax unless the seller is the lessee of the premises having the right to remove the meters and sells them to a purchaser who likewise has the right to remove the meters from real property owned by others. 1/27/65.

BULLION

See Coins and Bullion.

BUSINESS REORGANIZATION

See Occasional Sales—Sale of a Business—Business Reorganization.