

## **190.0000 CONSTRUCTION CONTRACTORS—Regulation 1521**

*See also Buildings and Other Property Affixed to Realty; United States Contractors; Factory-Built Housing; Construction Contractor Exemption from Increase in Rate of State Sales and Use Taxes.*

### **(a) IN GENERAL—ACTIVITIES CONSTITUTING CONTRACTING OR MAKING OF IMPROVEMENTS**

**190.0010 Above-Ground Swimming Pools.** Civil Code section 660 establishes the standards for determining whether property qualifies as an improvement to real property. Based on the three-part test involving intent, manner of affixation, and adaptability of the construction site, above-ground swimming pools are tangible personal property rather than improvements to real property. Accordingly, tax applies to the retail selling price. Installation charges are not subject to tax. 10/23/90.

**190.0020 Agreements Between Parties, Effect of.** Property constituting “materials” or “fixtures” is not to be regarded as other than materials or fixtures, i.e., personal property, regardless of whether after affixation it may be personal property by agreement between the parties or for the purposes of security agreements under the Uniform Commercial Code. The physical facts of attachment to real property govern. Accordingly, a contractor cannot properly buy “installed” materials and/or fixtures for resale. This view is not inconsistent with *Standard Oil Co. v. State Board of Equalization*, 232 Cal.App.2d 91. This decision was concerned only with the sale of fixtures in place. It was not concerned with the definition setting forth the application of the tax with respect to construction contracts. 11/29/66.

**190.0025 Aircraft Hangars.** Aircraft hangars which are prefabricated modular buildings movable on the highway as a unit from the point of sale to the point of installation constitute improvements to real property for sales tax purposes when installed. Upon installation, the hangars are attached to the asphalt on which they rest by lag screws, sealed to the ground by tar, and wired to a metered electrical hookup.

Where a unit is sold for installation by the purchaser or by a contractor hired by the purchaser, the contract is not a construction contract but a contract for the sale of tangible personal property. The contract is taxable in its entirety, notwithstanding the fact that the hangar may then be installed as an improvement to realty. 11/28/88.

**190.0029 Antenna Towers.** A taxpayer contracted with the United States military to furnish and install two communication antenna towers in California, a 100 foot tower and a 150 foot tower. For each tower, the taxpayer furnished and installed the various lengths of tower material, a ladder for the full height of the tower, safety rails, lights and light protections, a steel reinforced concrete foundation, and a block building including air conditioning and electrical panels.

The described communication towers are improvements to real property under Regulation 1521. Thus, the items listed are either materials or fixtures. Since a construction contractor is the consumer of materials and fixtures it furnishes and

installs pursuant to a contract with the United States, sales or use tax applies to the sales price of such property to the taxpayer. 3/15/96.

**190.0033 Asphalt Concrete Furnished by Contractor.** A Company is engaged in the business of furnishing asphalt concrete. The following examples explain the application of tax for different types of transactions entered into by the Company:

(1) The Company, either independently as a prime contractor or by subcontracting with a prime contractor, enters into a lump-sum contract to furnish, haul, and install asphaltic concrete. The installation is performed by the Company's employees. The Company is the consumer of materials. Sales tax reimbursement or use tax must be paid on all materials purchased, but there will be no sales or use tax as to the materials mined by the Company.

(2) The Company, either independently as a prime contractor or by subcontracting with a prime contractor, enters into a lump-sum contract to furnish, haul and install asphaltic concrete. The Company subcontracts the hauling and installation of the asphaltic concrete to an unrelated third party. The installation occurs under the direction of the Company and is performed by employees of the third party subcontractor.

The Company is the consumer of materials. Sales tax reimbursement or use tax must be paid on all materials purchased, but there will be no sales or use tax as to the materials mined by Company. The result would be the same even if the installation was not under the direction of the Company.

(3) The Company enters into a lump-sum contract with a prime contractor to furnish, haul and install asphaltic concrete. The Company subcontracts the hauling and installation of the asphaltic concrete to the prime contractor. The installation occurs under the direction and supervision of the Company and is performed by employees of the prime contractor.

The Company is the retailer of the materials with sales tax applying to its gross receipts from the sale of the materials. The "two" contracts are treated as one integrated agreement for California sales and use tax purposes. The obligation of the Company to "furnish and install" is without substance for California sales and use tax purposes.

(4) The Company enters into a lump-sum contract with a prime contractor to furnish, haul and install asphaltic concrete. The Company subcontracts the hauling and installation of the asphaltic concrete to an affiliate of the prime contractor. The installation occurs under the direction and supervision of the Company and is performed by employees of the prime contractor's affiliate.

The Company will be regarded as a construction contractor provided the "affiliate" is a legal entity separate and apart from the prime, not just a division, and the affiliate is actually independently engaged in the business of hauling and installing asphaltic concrete. That is, the affiliate must have employees, equipment, and be actively engaged in the business. If the affiliate is without independent business substance, the Company is regarded as a retailer of materials.

(5) The Company enters into a lump-sum contract with a prime contractor to furnish, haul and install asphaltic concrete. The Company subcontracts the hauling and installation of the asphaltic concrete to an affiliate of the prime contractor. The affiliate then subcontracts the installation of the asphaltic concrete to the prime contractor. The installation occurs under the direction and supervision of the Company and is performed by employees of the prime contractor.

As in Example 3, the Company is the retailer of the materials with sales tax applying to its gross receipts from the sale of the materials. 7/2/91.

**190.0040 Asphalt on Roads.** A person who sells and delivers liquid asphalt to an area other than a roadway where it is mixed with dry material and subsequently used for road surfacing is a retailer of the liquid asphalt. A person who furnishes and spreads liquid asphalt in its final resting place upon a roadway is a contractor and the consumer of the liquid asphalt. A person who sells and delivers liquid asphalt to the roadway is the retailer of the liquid asphalt, if he is not responsible for the subsequent mixing, spreading and compacting of the material. A contractor is a consumer when he spreads asphalt on a road and covers it with fine gravel, repeating the process as many times as is necessary to obtain the desired thickness of finished roadway. 5/22/57.

**190.0060 Asphalt and Similar Products.** Persons who agree to furnish and apply asphalt or other similar products on a lump-sum basis are considered the consumers of such products, provided such application constitutes improvement of real property. The materials must be applied in such a manner as to convert them to real property upon application. Where such products are applied by pressure spraying, the requirement is complied with. The mere dumping, however, of rock, sand, or gravel, which requires further spreading before materials reach their final resting place, is regarded as mere delivery and not as improving real property. 9/1/53.

**190.0070 Bank ATM.** Free-standing or counter-top automated teller machines (ATMs) are tangible personal property and tax applies to the gross receipts from a retailer's sale of such ATMs. Contracts to furnish and install such units are not construction contracts. However, ATMs which are built into the wall of a building or other structure are classified as "fixtures" under Regulation 1521. Contracts to furnish and install such units are construction contracts. Tax applies to the sales of such "fixtures" as specified in that regulation. 3/16/98. (M99-2).

**190.0080 Boat Marina.** A lump-sum contract to furnish and install a boat marina from prefabricated plastic or sheet metal sections is a construction contract—the prefabricated sections constituting materials. 4/22/68.

**190.0115 Car Wash Facility.** A lump-sum contract to construct a car wash facility is a construction contract within the meaning of Regulation 1521. 2/25/75.

**190.0120 Carpeting.** Contracts for wall-to-wall carpeting are construction contracts. The carpeting is regarded as "materials" and the contractors are, therefore, regarded as consumers of the carpeting, pads, etc., used in fulfilling such contracts. The tax, accordingly, applies to the sale of such "materials" to the contractor. If

purchased ex-tax the cost price of such “materials” is to be reported as self consumed merchandise. In the case of time and material contracts the contractor will be regarded as the retailer of the “materials” if the contractor bills the customer an amount for “sales tax” computed upon a marked up billing. Also, if the contract explicitly provides for the passage of title to the materials prior to the time that the materials are installed and separately states the sales price of the materials, exclusive of installation charges, the contractor is deemed the retailer of the materials per Regulation 1521(b)(2)(A). 7/5/51.

**190.0125 Carpeting—Carving Designs or Grooves.** Carving of a decorative design or grooves into an installed carpet is an operation which is not performed on tangible personal property. After a carpet has been permanently affixed to flooring, it loses its identity as tangible personal property. No tax applies to carving a decorative design or groove into carpeting which has been permanently installed. 12/21/92.

**190.0140 Cladding On to New Hoods.** A firm fabricates copper cladding in its own shop for installation on steel hoods. Once installed, the copper cladding cannot be removed without being destroyed. If the cladding is installed onto a new hood which is not part of the real estate, then the firm is making a retail sale. Since the firm is fabricating the hood, its entire charge is taxable. If, however, the hoods are part of the real estate at the time of the installation, then the firm is a construction contractor furnishing and installing materials (the cladding). This is true even though the hood is a fixture. As such, the firm is generally the consumer of the cladding. 1/20/95.

**190.0150 Communication Systems, Security and Fire Alarm Systems.** Taxpayer is in the business of selling and installing communication systems, security and fire alarm systems, and other electronic devices in various types of buildings. Taxpayer’s lump-sum installation contract sales are categorized as follows:

- (1) Paging and music systems for retail chain stores.
- (2) Special systems, such as security monitoring systems for office and bank buildings.
- (3) Sound systems.
- (4) Nurse call systems for hospitals.

Classification of property as an improvement to realty depends on: (1) the manner of its affixation to the realty, (2) its adaptability to the use and purpose for which the realty is used, and (3) the intent with which the annexation is made (Property Tax Regulation 122.5 and *San Diego TES Bank v. San Diego* (1940) 16 Cal.2d 142).

Except for the nurse call station, the above listed items are all properly classified as fixtures. Affixation is generally by bolts, nails, and similar means to realty. Electrical components are connected to permanent wiring. Any unattached tangible personal property which is a necessary, integral or working part of the physically annexed items is considered to be constructively annexed to the realty. Taxpayer’s systems are generally adapted to serve basic functions (security, file protection, etc.) of the building where they are installed.

The manner of annexation, the adaptability of the items to the use and purpose for which the buildings are used, and other objective manifestations of permanence leads to the conclusion that the system the taxpayer installs (other than nurse call stations) are permanent parts of the building.

Nurse call stations are properly classified as machinery and equipment under Regulation 1521(c)(8). They are generally affixed such that removal would not cause damage. Neither the call stations nor the facilities in which they are installed appear to be designed or modified for each other. And, the intent of the parties, as ascertained by the physical facts and outward appearances, is not to make a permanent improvement to real property. 3/4/94.

**190.0160 Completion of Subcontractor's Contract by Prime Contractor.** When, due to labor difficulties, a subcontractor is unable to complete installation of equipment, and the prime contractor completed the job and deducted actual labor cost, a percentage of overhead, taxes and insurance from the subcontract price, the prime contractor assisted the subcontractor in completing his contract in consideration of a reduction in the subcontract price. Thus, the fixtures belonging to the subcontractor were installed by the prime contractor without acquiring title thereto, and hence no additional tax is due from the subcontractor. 9/21/53.

**190.0160.325 Components of a Water Reclamation System.** The components of a water reclamation system will constitute machinery and equipment if the following sequential criteria of Regulation 1521 have been met:

- (1) The property is intended to be used in the production, manufacturing, or processing of tangible personal property not essential to the fixed works (system), building, or structure itself; or
- (2) The property is intended to be used in the performance of services or for other purposes such as research, testing, or experimentation, which uses are not essential to the fixed works (system); and
- (3) The property is attached to the realty because of its nature and it does not lose its identity as a particular piece of machinery and equipment; and
- (4) If attached to realty, is readily removable without damage to the unit or the realty.

The above criteria are not met if the property is:

- (1) intended as a component part of the whole improvement; or
- (2) part of a system which serves a common purpose for any part of the improvements; or
- (3) attached to the land, building, structure, or system; or
- (4) built into the building, structure, or system, or another fixture.

The machinery and equipment must be physically and functionally independent of the fixed works, building, structure or system. If it is so attached, the reason for the attachment must relate to the functional nature of the property and its ability to function as a particular piece of machinery and equipment. Accordingly, if it is attached and functions as part of, or in common with, the use or purpose of the improvement, it is not machinery and equipment.

Based on these criteria, the property installed in the water reclamation system should not be classified as machinery and equipment, since all components are attached and function as part of, or in common with, the use or purpose of the improvement. Therefore, components of the water reclamation system should be classified as either fixtures or material. 2/6/89; 5/4/96. 12/3/08. (Am. 1998-3,2009-2).

**190.0160.400 Computer Installed in Special Purpose Buildings.** Computer systems installed in special purpose buildings in conjunction with the installation of automated water, electricity, and sewage control systems are fixtures and improvements to real property rather than personal property.

In *Bank of America v. County of Los Angeles*, 224 Cal.App.2d 108 (1964), the stated systems were considered improvements to real property (fixtures) under the following facts:

- (1) The buildings were special purpose buildings.
- (2) The components of each system were interconnected by hundreds of signal and power cables. The floor of the building was raised to accommodate the cables.
- (3) Air conditioning and humidity control was installed for optimum operating efficiency.
- (4) Substantial expense would be entailed in relocation of any of the components.
- (5) Some connections were made by rigid iron pipes.
- (6) Great expense would be incurred in moving the heavy equipment.
- (7) The size and weight (11 tons to each system) militates against moving the equipment.

Thus, such installation of computer systems are considered fixtures under Regulation 1521 and tax applies as set forth in subsection (b). 3/31/80.

**190.0161 Construction Contractor—Issuing Resale Certificate.** A construction contractor may issue a resale certificate to its suppliers when purchasing materials as a fungible, commingled lot, a significant portion of which the contractor intends to resell and a portion of which the contractor will consume, when at the time of purchase the contractor does not know which item will be consumed and which will be resold. For example, materials are all placed in a resale inventory and removed for sale or use as needed. However, if at the time of purchase the contractor knows that certain materials will be consumed in the performance of a construction contract, the contractor may not issue a resale certificate with respect to the materials. The sale to the contractor of such materials is subject to the tax. 8/15/94.

**190.0162 Contractor as Seller of Materials.** In order for a contractor to be considered the seller of materials he/she furnishes and installs, both requirements of Regulation 1521 (b)(2)(A)(2) must be met. It is not sufficient that the contract only contains a clause passing title to the materials prior to installation. The contract must also separately state the sales price of the materials, exclusive of the charge for installation. Furthermore, it is not sufficient that the contract require

the contractor to show the material costs separately on invoices for partial payment as the work progresses or on final billings. What is in fact a lump-sum contract cannot be changed to a time and materials contract by such actions. 1/7/85.

**190.0165 Crushing Roadbed.** A road contractor removes old concrete and asphalt roadbeds and stockpiles it. Another firm contracts to crush the stockpiled concrete or asphalt into small particles. The contractor then uses the crushed particles to reconstruct the road. The crushing of the cement and asphalt is a taxable process. At the time it was crushed, the stockpiled roadbed material was tangible personal property not realty. Therefore, the crushing firm is not improving realty, but is rather processing tangible personal property. 3/4/77. (Am. 2004-2).

**190.0170 Cultured Marble Products.** Sales tax applies to sales of cultured marble products without installation unless the seller obtains and retains a resale certificate. If the purchaser is buying both materials and fixtures, as defined in Regulation 1521, the resale certificate should state that the purchaser is engaged in the business of selling cultured marble materials and fixtures.

When the cultured marble products are furnished and installed under a lump sum contract, the installing contractor owes sales tax on the selling price of the fixtures. He may not accept a resale certificate from prime contractors for the fixtures he installs. If he has purchased the fixture in a completed condition, the price he paid for the fixture is the amount on which he owes tax. If he manufactured the fixture, he owes tax on the price at which he sells similar fixtures in similar quantities ready for installation to other contractors. If he does not sell the fixtures he manufactures to other contractors, then the amount stated in price lists, bid sheets, or other records will be the amount on which he owes tax. If none of the above methods apply, then he must compute his selling price using the six factors stated in Regulation 1521(b)(2)(B)(2)(b).

The installing contractor is the retailer of fixtures, but the consumer of materials. If he does not pay tax reimbursement to the vendor from whom he purchases the materials, then he reports the price he has paid for them on line 2 of his tax return. He does not report or pay tax on the labor or overhead that he expends on further fabricating materials.

In determining which cultured marble products are materials and which are fixtures, the following rules apply:

1. A one-piece vanity top, with the bowl molded into and an integral part of the top, is materials.
2. Vanity tops without a bowl are materials.
3. A vanity top without a bowl that has a bowl added to it at the jobsite prior to being installed on top of a cabinet is a fixture.
4. If a vanity top is installed without a bowl, with a bowl added after the installation of the top, the top is material, the bowl is a fixture.
5. When a bowl is attached (not molded as an integral part) to a vanity top at the factory and subsequently installed at the jobsite, the unit (top plus bowl) is a fixture.

6. When a vanity top without a bowl, but with a cut-out area, is installed into the cabinet at the jobsite and subsequently a drop-in type bowl is installed in the top, the top is materials. The drop-in bowl is a fixture.

7. A bathtub is a material.

8. Wall panels surrounding the bathtub are materials.

9. Decorative items such as tub skirt, soap dishes, toothbrush holders, and other such items commonly known as accessories, are materials.

10. Shower stalls, including the shower pan and the wall panels, are materials, with the exception of a shower stall constructed as a one-piece unit similar to an integral fiberglass unit, which is a fixture.

In rules 3 through 6, we assume that the cabinet is attached (affixed) to the real property before the top is added. The basic rule then becomes that a top without a bowl is materials; a top and bowl unit is a fixture. 7/5/79; 8/23/82; 6/10/85; 12/11/85.

**190.0173 Custom Designed Area Rugs, Wall Hangings, and Carpeting.** A taxpayer contracts with designers, architects and builders for the design and fabrication of custom designed area rugs, wall hangings and carpeting. The contracts may or may not require installation by the taxpayer. In some cases the taxpayer furnishes the carpet material and in other cases the customer furnishes the carpet material.

Where the taxpayer attaches carpeting, the taxpayer is a construction contractor and therefore the consumer of the materials. The taxpayer may not accept resale certificates from the customer. Where the taxpayer does not attach property to the realty, it is the retailer of the property and may accept a resale certificate from the customer.

Custom area rugs and custom wall hangings are tangible personal property and no tax applies to either charges by the taxpayer or charges to the taxpayer if a resale certificate is taken in good faith. This is true regardless of whether the taxpayer or the customer furnishes the material and regardless of whether or not the taxpayer places the property.

With respect to custom designed wall-to-wall carpeting, charges by the taxpayer for carpet, design, and measurement or template fees as well as all related charges are taxable regardless of who supplies the material if the customer installs the carpeting. Charges by the taxpayer are not taxable if the taxpayer installs the carpeting pursuant to a construction contract where the taxpayer is considered to be the consumer.

In some cases the taxpayer pulls up carpeting at the customer's site, designs and fabricates a custom design carpet which is reinstalled. If the taxpayer reinstalls the carpeting, tax does not apply to the charges to the customer but does apply to purchases by the taxpayer. If the customer reinstalls the carpeting, tax applies to the taxpayer's charges to the customers. 12/20/89.

**190.0176 Design of General Layout.** In addition to providing fixtures, materials, and machinery and equipment, a contractor makes an "engineering charge" for development of drawings, plans, diagrams, etc. which relate solely to the general

layout, arrangement, and integration of various items of machinery and equipment. The service would be regarded as installation of property and the charges would not be subject to tax. 8/30/67.

190.0176.900 **Doors.** A contractor contracts to furnish and install a door for a lump-sum price. The job requires the contractor to cut the door to fit the door opening before installing the door. The contractor is performing a construction contract by furnishing and installing materials, i.e., the door. As such, the contractor is the consumer of the door and any other materials used to install the door. Tax applies to the sale of those materials to the contractor, or to the use of the materials by the contractor.

A lump-sum contract to trim an existing and already installed door, either in place or by removal, trimming, and reinstallation is also a construction contract. Tax does not apply to the contractor's charges. Tax does apply to the sale to or the use by the contractor of any materials consumed in performing that work, e.g., screws or hinges, unless the contract explicitly provides for the transfer of title to those materials before installation and separately states the sales price of the materials on the invoice to the customer. In the latter instance, the contractor is the retailer of the materials and tax applies to the sales price of the materials. 1/10/97.

190.0177 **Doors Installed in Construction Contracts.** The application of sales tax to transactions with various fact patterns regarding doors installed in construction contracts is as follows: The sequential steps involved are:

(1) "Scheduling and detailing," i.e., reviewing plans and specifications for the construction project and listing each door on the job and determining the proper location for the hinges and the lock or latch set, the type of hinges and lock set, whether or not door closures are involved.

(2) Acquisition of the doors.

(3) Machining of the doors to receive the hardware.

(4) Installation of the doors.

The following parties may be involved:

(A) The contractor.

(B) A subcontractor of "A."

(C) A second subcontractor of "A."

The above steps and parties combine to create the following possible fact patterns:

(I) A alone is involved.

(II) A does steps 1, 2 and 4, subcontracts "B" to do step 3.

(III) A contracts to be responsible for final installation but in fact only does steps 1 and 2 and subcontracts B to do steps 3 and 4.

(IV) A does steps 2 and 4 and subcontracts B to do steps 1 and 3.

(V) A does steps 2 and 4 and contracts step 1 to C and step 3 to B.

Applying the law to the above patterns, the sales tax application is as follows:

(I) "Doors" are regarded as "materials." In their installed condition, they become a part of an improvement to real property. Thus, A, who furnishes and installs doors is a construction contractor. Therefore, pursuant to Regulation 1521, the sales tax would apply to the sale of the doors to A as a consumer thereof.

(II) There are two taxable transactions: (1) the acquisition of the unmachined doors by A and (2) the processing, i.e., "machining" of the doors by B, the doors having been furnished by A, see section 6006(b).

(III) The sales tax would apply to the sale of the doors to A, see Regulation 1521 (a)(1)(B)(2) and Annotation 190.0980.

(IV) There are two taxable transactions: (1) the acquisition of the doors by A and (2) the "machining" of the doors by B for A. As to the latter transaction, there must be included in the measure of tax, i.e., the gross receipts not only the charges for "machining," but also the charges for "scheduling and detailing." This is because the latter is a service provided by B which is a part of B's sale to A.

(V) There are two taxable transactions: (1) the acquisition of the unmachined doors by A and (2) the machining of the doors by B for A. Since step 1 was separately subcontracted to C, it was not associated with a sale or processing considered a sale of tangible personal property. Standing alone, it remains a service and is not subject to the tax. 10/29/76.

**190.0178 Doors and Windows.** A door and window firm transfers doors and windows to a general contractor at a marked up price and assumes the following duties: works with the architect and builder to estimate material needs, delivers the materials to the building site, may actually "help with the installation," and replaces any damaged or broken doors and windows.

The key issue is whether the door and window firm is contractually responsible for installation of the materials provided. A retailer who furnishes material but does not install it incurs a sales tax liability measured by the retail sales price, including markup. A subcontractor who both furnishes and installs materials owes tax only on the cost of the materials. From the information provided, the door and window firm is not contractually responsible for installation, although it may help someone else install the materials. Since the door and window firm is not contractually obligated to both furnish and install the windows and doors, it is the retailer of those materials and the entire charge to the general contractor, including any markup, is taxable. 3/31/89.

**190.0180 Dumping of Rock for a Breakwater, Last Act Test.** Whether the dumping of rock in a breakwater constitutes the improving of realty depends on the work, if any, which must be performed on the rock after it is dumped. The pouring of ready mixed concrete in a form is not considered to be improving realty because the concrete must be spread, tamped, and smoothed after it is poured. Likewise the spreading of gravel is not an improvement to realty because after it is spread it must be leveled, tamped and rolled.

Taxability will turn on whether or not additional work need be performed on the rock after it is dumped on the breakwater. If the dumping of the rock from the barge is the last act necessary to put the rock in place in the breakwater, then the

dumping of the rock is an improving of realty rather than a sale of tangible personal property. 6/18/52.

**190.0192 Environmental Enclosure.** An environmental enclosure which measures 50'x180'x14'high is completely moveable and can be disassembled without damage either to the enclosure or to the building in which it is located. Contracts for the erection of free-standing structures are construction contracts notwithstanding that the structure is erected inside another structure. The environmental enclosure is of a substantial size and permanence and, thus, is regarded as an improvement to realty. Tax applies to the cost to the contractor who installs such an enclosure under a contract with the United States. 5/18/94.

**190.0200 Evaporative Coolers.** A dealer who contracts to furnish and install evaporative coolers into mobilehomes, not on permanent foundations, and subcontracts the job to a heating and air conditioning contractor is a retailer of the evaporative coolers. The dealer is required to pay sales tax on the entire gross receipts of the retail sale. Since the mobilehome is not installed in a permanent foundation, it retains its status as tangible personal property. Accordingly, the contractor, in furnishing and installing the evaporative cooler, does not perform a construction contract. 5/31/91.

**190.0208 Exemption and Resale Certificates.** Construction contractors are sellers of fixtures and may purchase fixtures for resale regardless of whether the contractor intends to install the fixtures or to resell them to another contractor for installation by the other contractor.

Construction contractors are consumers of construction materials which they furnish and install. Contractors may issue resale certificates when purchasing materials only when they will actually resell a significant portion of them and at the time of purchase they do not know which items will be consumed and which will be resold.

Sales of construction materials intended to be used on out-of-state construction projects may be purchased under a timely exemption certificate pursuant to section 6386 by a holder of a seller's permit. A resale certificate should not be issued in this situation because the materials will not actually be resold. 7/5/94.

**190.0220 Fabrication.** The fabrication of precast steel piling to be emplaced by another contractor constitutes a taxable sale of personal property in that the transaction involves the fabrication of such property for the emplacing contractor who is the consumer using it to improve real property. 2/21/55.

**190.0233 Fabrication Labor Performed by Subcontractor-Fixtures.** A taxpayer contracts with the property owner or a prime contractor to furnish and install certain types of fixtures. The taxpayer subcontracts the actual installation and assembly to its subcontractor. The taxpayer's subcontractor performs fabrication labor on the fixtures owned by the taxpayer prior to attachment. Subsequently, the subcontractor attaches the "fabricated fixture" to the real property.

Since the taxpayer does not sell the fixtures to the subcontractor, the taxpayer remains responsible to the customer for both the furnishing and installation of the fixtures. Thus, the taxpayer is the "construction contractor/retailer" within the

meaning of Regulation 1521(b)(2)(B) with respect to the fixtures it furnishes, and tax applies to the taxpayer's sale of the fixture to the customer.

The processing or fabrication work performed on the fixture by the subcontractor prior to the installation by the subcontractor is a "sale" within the meaning of section 6006(b). It is a separate sale from the taxpayer's sale of the fixture. Thus, when a subcontractor does not furnish a fixture, but prior to installation performs processing or fabrication work resulting in the production of the completed fixture, and thereafter installs the fixture, the subcontractor is subject to tax on that portion of its charge attributable to processing or fabrication. (See Annotation 190.0660 (4/17/50).) Since the subcontractor is the retailer of fabrication labor, he or she may not accept a resale certificate from the taxpayer for such fabrication labor. 8/29/96.

**190.0252 Factory-Built School Buildings—Church Schools.** Factory-built school buildings installed on sites owned by church schools are not subject to the special tax treatment afforded by section 6012.6 of the Revenue and Taxation Code. Section 6012.6 requires the building to be installed on a site owned or leased by a school district or community college district. 11/16/90.

**190.0253 Factory-Built Buildings—Community Colleges.** Community colleges that do not go through the process of having their purchases of factory-built buildings approved by the state architect do not qualify for the special tax treatment provided under section 6012.6 for "factory-built school buildings." 11/16/90.

**190.0256 Factory-Built School Buildings—Issuance of Resale Certificate.** A resale certificate may be issued for factory-built school buildings if the purchaser is to resell without installation but may not be given if the purchaser has an existing contract to furnish and install for a school district or community college district. If a resale certificate has been properly issued, the purchaser enters into a contract to furnish and install for a school district or community college district and the 40% measure applies on the purchaser's resale. The purchaser cannot consider itself the consumer in such situation and pay on 40% of its purchase price. 12/28/90.

**190.0258 Factory-Built School Buildings—Statute Additions and Amendments.** From September 26, 1989 to September 12, 1990 (original section 6012.6). During this period, the sales tax applied to 40% of the selling price of a factory-built school building when furnished and installed for a school or school district. Factory-built school building was limited during this period to buildings capable of being occupied by pupils. It excluded buildings used exclusively for warehouse, storage, garage, or district administrative purposes.

Effective September 13, 1990 (amendment to section 6012.6). This amendment broadened the coverage of the statute to include community college districts. Also, the definition of factory-built school building was liberalized so that administrative buildings, storage buildings, etc., would be included. Specialized buildings such as special education units, restrooms, resource centers, remedial classes, libraries, book stores, student project/activity centers, computer rooms, factory offices, first aid and weight rooms are also included in the definition.

Factory-built school buildings as defined above must be designed and manufactured as set forth in Regulation 1521(c)(4)(B)(1) A. or B. 12/28/90.

**190.0260 Fluorescent Lighting.** A contract to service fluorescent lighting for a uniform monthly fee is a lump-sum construction contract. Tubes and ballasts installed pursuant to the contract are fixtures. The appropriate measure of tax is the selling price to the contractor of the tubes and ballasts. 4/14/66.

**190.0270 Food Service Industry Contracts.** Under Regulation 1521 a construction contractor is the consumer of materials that he furnishes and installs in the performance of lump sum contracts. He is the seller of machinery and equipment.

Materials are defined as items of tangible personal property that are 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 lose their identity and become an integral and inseparable part of the real property.

The construction contractor may not take a resale certificate for materials that he furnishes and installs. Tax applies to the sale price of the materials to him.

The following are some items which are usually considered to be materials when furnished and installed by a construction contractor in performing a contract for the food service industry:

- Carpeting, including padding and trim when affixed to the real property by glue, nails, etc.

- Doors

- Ducts installed in walls, ceilings, and floors

- Grab bars (for handicapped lavatories)

- Millwork

- Pass window frames and shelves

- Wall corner pieces and wall caps

- Wall covering materials (wallpaper, paneling, etc.)

- Wall flashing

- Wall mirrors

Fixtures are defined as including items which are accessory to a building or other structure and do not lose their identity as fixtures when installed. Some items may be either fixtures or machinery and equipment depending on the manner of installation. For example, a freestanding stove which is attached to an electric outlet or gas outlet would be machinery and equipment. On the other hand, a stove which is built into a fixture or which is attached to the real property by bolts, screws, etc., will be a fixture.

A construction contractor may not take a resale certificate for fixtures which he furnishes and installs. And there is one and only one exception: The contractor may take a resale certificate if he furnishes and installs the fixture for a person, other than the owner of the realty, who intends to lease the fixture in place as personal property and the lessor of the fixture is not also the lessor of the realty.

When a contractor installs fixtures under a lump sum contract, tax applies to the “cost price” of the fixture as explained in paragraph (b)(2)(B) of Regulation 1521.

The following items furnished and installed by contractors to the food service industry are generally classified as fixtures:

- Bolt-down counter stool bases, with stools attached thereto

- Bolt-down table bases with table tops affixed

- Custom fabricated cash stands

- Custom fabricated cocktail back bar superstructures

- Custom fabricated cocktail back bars

- Custom fabricated cocktail bars

- Custom fabricated counters

- Custom fabricated dishtable assemblies

- Custom fabricated make-up tables

- Custom fabricated pot racks

- Custom fabricated scullery sink assemblies

- Custom fabricated seating assemblies/booth units

- Custom fabricated service stands

- Custom fabricated serving counters

Custom fabricated soffits Custom fabricated walk-in coolers and freezers that are affixed to the real estate, either through a fastening to a building wall or when the walls are imbedded or coved into the building surfaces

Dispensers for soap, towels, toilet tissue

Faucets Freezers (remote)

Hoods Lighting fixtures

Motors

Plumbing fixtures

Refrigeration compressors

Refrigerators (remote)

Safes, imbedded in concrete in the buildings

Water heaters (built into fixtures or into water systems)

Water softeners (built into fixtures or into water systems)

Fixtures also include the following items which are built into fixtures or otherwise built into the realty and which may not be removed without damage to the items or the realty:

- Char-Broilers

- Dish dispensers

- Dishwashers that are built into a dishtable assembly

- Disposals
- Drink dispensers
- Freezers
- Griddles
- Ice cream cabinets
- Ovens
- Refrigerators
- Roll warmers
- Scrap chutes
- Soda fountain systems
- Soup warmers
- Syrup rails

Machinery and equipment include property intended to be used in the production, manufacturing, or processing of tangible personal property or the performance of services which are not essential to the fixed works, building, or structure itself but which incidentally may on account of its nature be attached to the realty without losing its identity as a particular piece of machinery and equipment and which, if attached, is readily removable without damage to the unit or to the realty. The contractor furnishing and installing machinery and equipment may take a resale certificate with respect to these items from a person who intends to resell them as tangible personal property.

Tax applies to the price received for machinery and equipment as explained in paragraph (b)(2)(C) of Regulation 1521.

The following is a list of items which may be generally considered to be machinery and equipment when freestanding or when they are not firmly affixed to the building or built into it or another fixture and which may be readily removed without damage to the building, the unit, or other fixture:

- Adding machines
- Artifacts items
- Bar stools
- Beverage and juice dispensers
- Bulletin boards
- Can openers
- Chairs
- Char-Broilers
- Chinaware, silverware, pots and pans, paper goods, culinary items
- Coffee makers
- File cabinets
- Flight-type dishwashers

Floor racks  
Griddles  
Hot water hoses  
Ice bins Ice cream cabinets  
Ice making machinery  
Iced tea dispensers  
Iced tea machines  
Lockers Microwave ovens (freestanding)  
Milk dispensers  
Mixers  
Ovens  
Portable bins and tables  
Ranges  
Reach-in freezers (self-contained)  
Reach-in refrigerators (self-contained)  
Roll covers  
Safes  
Salamanders  
Scales  
Shelving units  
Silverware boxes  
Slicers  
Sofas with chairs  
Table lamps  
Tables  
Time card racks  
Time clocks  
Toasters. 4/5/77.

[190.0280](#) **Component Parts—Installation of.** The assembling of fixtures, as distinguished from the installation, is regarded as a step in the production, fabrication or processing of tangible personal property the charges for which must be included in taxable gross receipts. On the other hand, when the assembling of the parts and the installation of the fixture constitute an indivisible operation, that is where the fixture is assembled by attaching each part to the realty and the fixture does not exist as a unit until its parts are attached to the realty, the activity would constitute nontaxable installation. We would regard the component parts as the property sold.

However, any assembly done prior to attachment to the realty constitutes taxable fabrication. Thus if part A is attached to the realty and then part B is attached to part A, to become part of the realty, the activity is nontaxable installation. If part A is attached to part B, and then they are attached to real property, the attachment of part A on part B constitutes taxable fabrication while the attachment of the parts to the realty constitutes nontaxable installation. 5/2/50.

190.0300 **Concrete.** Persons supplying ready-mix concrete to contractors or owners under contracts which merely require delivery, whether to separate receptacles or to forms, are retailers. 1/12/50.

[190.0320](#) **Concrete Cattle Troughs.** Concrete cattle feed and watering troughs are “materials” which result in improvements to realty when installed. Labor costs for installing the troughs are not taxable. 9/29/64.

[190.0340](#) **Fabrication by Wholly-owned Subsidiary.** Fabrication performed by a structural steel firm which installs the “material” under a construction contract is not subject to tax. However, when the fabrication is performed by a wholly-owned subsidiary, such fabrication constitutes part of the “sales price” of the material acquired by the parent. 5/20/97.

[190.0350](#) **Garage Door—Remote Control.** A contract to furnish and install an automatic garage door is a construction contract. The door itself; the hardware that connects the door to the structure; the hardware which links the door to the mechanical and electrical units; and the electrical wiring are classified as materials. Motors, gear boxes, electrical or electronic receivers, mounted control stations, and portable transmitting units are classified as fixtures. 8/20/84

190.0354 **Gasses Used—Fire Suppression System.** Automatic fire suppression systems (and all of its components), by manner of affixation, the purpose of its intended usage, and the intention of the parties becomes part of the structure in which the system is installed. Components of the system, including gasses initially used to charge the system, are part of the system. In such cases, the gasses are not taxed as sales of tangible personal property. They are treated the same way that freon is treated when sold with the installation of air conditioning units. 7/11/96.

190.0355 **Glass Breakage—Window Glazier.** A glazier is a consumer of glass, windows, and mirrors furnished and installed pursuant to a lump-sum construction contract to improve real property. In performing those contracts, the glazier is the consumer of all materials used including any breakage that may occur while performing the contracts. Accordingly, use tax is due measured by the purchase price of items withdrawn from ex-tax resale inventory, including broken materials. 3/20/90.

[190.0357](#) **Group or Combination of Contractors.** Two entities execute an agreement in which one furnishes paving materials and the other does the paving work on contracts they have entered into jointly with third parties. The agreement provides that contract revenues will be allocated between the entities on the basis of the line items in the contract bid.

This agreement does not result in the creation of a joint venture as the parties have not agreed to share profits and losses. Rather, the parties to the agreement appear

to be a “group or combination acting as a unit” which is within the definition of “person” in Sec. 6005. This “person” is the contractor responsible for furnishing and installing the paving material and is, therefore, the consumer of the material. Sales of the paving material to the “person” by the entity that produces the paving material are taxable retail sales, the measure of which is the amount shown of the line items of the contract pertaining to the production of the material. 8/12/92.

190.0360 **Drapes.** Draperies, even though custom made and installed pursuant to a lump-sum contract are personal property and not “fixtures” nor is the supplier a construction contractor consuming “materials” under Regulation 1521. 8/17/64; 8/19/64.

190.0400 **Home Owner, Liability of.** The home owner is under no obligation whatsoever for payment of use tax with respect to materials used by a construction contractor in erecting a home. The tax is the contractor’s obligation and there is no basis whatsoever for holding the home owner liable for the tax. Even if the contractor installed “fixtures,” the home owner is under no tax liability to the State since the contractor would be making a sales subject to sales tax and he alone could be held liable for that tax. 6/20/50.

190.0440 **Houseboats and Floating Homes.** A houseboat or “floating home” is a vessel within the meaning of Revenue and Taxation Code section 6273 if it constitutes personal property and is navigable.

The property should be classified as personal property unless it is affixed to the real property in such a manner as to constitute a permanent addition thereto. The property will be presumed to be personal property if the owner does not also own the real property or hold a lease for a term of years substantially equivalent to the life of the houseboat or floating home.

The term “vessel” is defined by Revenue and Taxation Code section 6273 to mean “. . . any boat, ship, barge, or floating thing designed for navigation in the water . . .” with certain specified exceptions. The term “vessel” includes houseboats and those floating homes capable of navigation under their own power or suitable for normal towing.

Floating homes are vessels without regard to the fact that they may be used as a place of residence and without regard to the nature or number of connections (sewer, water, power) between the floating home and the shore if the floating home, upon being disconnected, is suitable for normal towing. Floating homes constructed upon reinforced concrete hulls having a rectangular vertical surface in front (as opposed to a “V” shaped or cantered bow) are not “designed for navigation in the water” but are designed merely to float. Floating homes installed upon plywood pontoons surfaced with fiber glass and open at the top are designed for flotation, not navigation. So, too, floating homes installed upon Styrofoam floats wrapped in polyethylene plastic film are not designed for navigation.

The fact that there is no means of propulsion aboard the floating home is irrelevant in determining whether the floating home is “designed for navigation.”

So, too, the mere absence of running lights, towing bits, cleats, or a stern notch for pushing is not conclusive. A floating home may be regarded as a “vessel” in the absence of these items. The fact that a floating home may be required to be registered with the Department of Motor Vehicles as an “undocumented vessel” under Vehicle Code section 9850 is not conclusive as to its classification under section 6273. A floating home may be subject to registration under the Vehicle Code yet not be suitable for normal towing and thus not a “vessel” under section 6273.

Floating homes constructed on concrete hulls, pontoons, or floats of the type described, in accordance with the Uniform Building Code or local construction ordinances are not “designed for navigation.”

Some boats, ships, or hulls may be designed for navigation when first manufactured. These craft may be converted to residential use and may be connected to shore facilities. This alone does not affect the fitness of the craft for movement through the water. Thus a fishing boat converted to residential use is ordinarily a vessel. Some units are designed as floating homes from the inception and are not built in a manner suitable for movement through the water. These units are not “vessels” under section 6273.

In summary, houseboats and floating homes are personal property. Their sale is not regarded as a sale of an interest in realty. However, not all floating homes may be classified as “vessels.” The sale by a private party of a floating home not qualifying as a “vessel” would ordinarily be exempt from tax as an “occasional sale.” 8/31/78; 2/26/81.

**190.0442 Houses on Indian Reservation.** A firm contracts with an Indian Housing Authority to construct 40 homes on an Indian Reservation. The contract provides in part: “Title to all materials to be used in this project which are delivered to and properly stored on the jobsite and the subject of partial payment shall transfer to the owner prior to the time the materials are installed by the contractor or any subcontractor.” The contract also provides for a separate price for materials and charges for installation.

The contractor is the retailer of the materials and the sales to the Housing Authority on the reservation are exempt from tax. 1/16/86.

**190.0445 Installation of Railway Signal System and Automatic Speed Control Detectors.** A firm has a lump-sum contract to furnish and install signal systems and automatic speed control detectors on an underground railway. The scope of the work involves segregating the track into blocks, providing code generators for power controlling switches, and installing signals, lighting and destination signs at each loading platform. For each rail car, the firm also provides pickup coils and equipment which identify the codes transmitted through the rails in order to control the speed of the cars. In addition, the firm will also provide free-standing peripheral equipment and install the pickup coils and equipment on the rail cars themselves. The property involved is classified for purposes of Regulation 1521 as follows:

**Materials:**

(1) Sensing cables

**Fixtures:**

(1) Control Units and Computer Equipment, attached in such a manner that they become an improvement to realty.

**Machinery and Equipment:**

(1) Free standing equipment attached merely by plug ins

(2) Train carried equipment—If the cars upon which the equipment is installed are used, the labor to install is not taxable. If the cars are new, the installation is part of the fabrication of the cars and is subject to tax.

(3) Cathode ray tubes and keyboards—connected to main computer, but will perform some work independently. Three units operate the plant and four units are used for standard data processing functions.

(4) Matrix printer

(5) Teletype unit

(6) Computer—2 major (3'x5') and 21 remote slaves

(7) Card recorder

(8) Magnetic tape unit

(9) Paper tape punch

(10) Line printer Items 1 through 10 are plug in units and mobile (on rollers). As such, the measure of tax includes the charge for shop assembly, wiring and testing of these units, prior to installation. 6/4/76.

**190.0450 Installation of Satellite Television Systems.** A retailer of satellite television systems provides installation as an option. The installation includes putting a post in concrete, putting five pieces of the satellite dish on the post, putting electronics on the dish, running wire from the dish to the inside of the house, hooking up electronics to the wire, aligning the dish, and programming the receiver.

This is a construction contract. Charges for labor or services used in installing or applying the property sold are excluded from the measure of tax. 1/4/93.

**190.0455 Installing Customer-Provided Signs.** A contractor who only installs customer-provided signs that are classified as “fixtures” under Regulation 1521 and does not perform any fabrication of the sign prior to installation would not be required to obtain a seller’s permit. If, however, the contractor performs fabrication labor prior to installation or furnishes property which is not considered “material” within the meaning of Regulation 1521, the contractor would be required to hold a seller’s permit and report and pay sales tax to the Board on such charges. 1/24/94.

**190.0457 In-Wall Bed.** A taxpayer is a distributor of in-wall beds which it sells and installs on a lump-sum basis. The bed consists of three basic parts: a factory assembled frame, a box spring, and a mattress. The frame is made of steel with a plywood subpanel attached to the bottom of it along with an attached headboard and a system for raising and lowering the bed. The box spring is affixed by fitting it into slotted supports rising from the frame and fastening with screws at the four

corners so that it will not move when the bed is placed in an upright position. The box spring has cloth straps permanently affixed in two or more places. The mattress is tied to the box spring by means of the cloth straps.

A wall-bed frame and box spring constructed and installed in this manner becomes an improvement to realty upon affixation to real property. The frame and box spring are fixtures within the meaning of Regulation 1521(a)(5) and Appendix B and the taxpayer owes sales tax on the sale of that fixture as provided in Regulation 1521(b)(2)(B). The unaffixed mattress, however, is considered tangible personal property such as furniture rather than a component part of a fixture. The taxpayer's gross receipts from the sale of the mattress are subject to sales tax. If the taxpayer bills in lump sum to furnish and install the complete bed frame, box spring, and mattress and also bills in lump sum to furnish and install only the frame and box spring, the gross receipts from the sale of the mattress would be the difference between these two lump-sum prices. 2/9/81.

**190.0458 Irrigation Systems.** A contract to furnish and install a self-powered irrigation system which propels itself up and down the field, guided by a signal emanating from a buried guide wire and drawing water from a canal paralleling the field being irrigated, is a construction contract for the installation of machinery and equipment except for the buried wire, which is material. This conclusion is based on the fact that the system is intended for use in the production of tangible personal property, i.e., farm crops, and is not essential to any fixed works, e.g., building. It does not lose its identity as a particular item of equipment and would not damage the realty if removed since it is not attached.

A contract to furnish and install an irrigation system, utilizing a center pivot point consisting of a concrete pad on which is mounted the rotating framework from which water is applied to the target area, is a construction contract for the installation of fixtures, except for the buried wire used to direct the moving parts, which is material. This conclusion is based on the fact that the hub of the rotating framework is attached to the realty, the system's peculiar adaptation to the particular piece of land which it serves, and the intention that it remain in place as evidenced by the first two factors. 8/31/79.

**190.0460 Joint Venture.** Two California corporations form a joint venture for the fabrication and erection of structural steel. The joint venture will bid for and enter into a number of construction contracts over a significant period of time and will purchase all materials necessary to the performance of such contracts. The joint venture will hold its own contractor's license. Fabrication and erection activities will be performed by employees of the individual venturers. The joint venture will treat the labor as contributions to capital. Revenues from the joint venture will be distributed based on contributions to capital.

Tax does not apply to contributions to capital of a commencing corporation or commencing partnership in exchange solely for first issue stock in the commencing corporation or an interest in the commencing partnership. In this case, the "contribution" extends over a long period of time and could not be regarded as a contribution to a commencing entity. Thus when an employee of an individual venturer performs only fabrication for the joint venture, the venturer is

making a taxable sale to a consumer (the joint venture). On the other hand, when a venturer contracts with the joint venture to both fabricate and install, the venturer is the consumer of any fabrication that it installs, and tax does not apply. 1/7/94.

**190.0461 Joint Venture Liability.** Two construction contractors enter into a joint venture agreement for the specific purpose of performing a construction contract. The joint venture contracts to construct a highway in California with a third party, other than the United States.

Contractor A supplies the construction materials by producing rock, sand and gravel from its own quarry. These materials are contributed to the commencing joint venture by Contractor A. Joint venture partner, Contractor B, will install the construction materials and contribute this installation labor to the joint venture. In addition to receiving an interest in the joint venture, Contractors A and B receive a commitment from the joint venture to be paid an amount that represents their respective value of the materials and labor sold by the joint venture to its customer.

Under the Sales and Use Tax Law, sales tax does not apply to a transfer of property to a commencing entity (e.g., a joint venture) in exchange solely for an interest in that commencing entity. However, tax applies if the transferor receives consideration such as cash, notes, or an assumption of indebtedness, and the transfer does not otherwise qualify for an exemption. The Sales and Use Tax Law does not provide a means by which to avoid tax when the transfer of property to a commencing entity in exchange for a membership interest also includes the simultaneous sale of that property. Since Contractor A receives consideration at the time it transfers the construction materials, i.e., the commitment by the joint venture to pay a specified amount concurrent with the joint venture's transfer of the construction materials to a third party, such consideration constitutes a sale that is subject to tax. The gross receipts from that sale are measured by the amount received by Contractor A for the construction materials, including fabrication and excavation. While Contractor B transfers installation labor to the joint venture for consideration, that is not a sale of taxable tangible personal property and thus is not taxable. 4/30/03. (2004-1).

**190.0470 Kiosks.** A contracts to sell and install kiosks in a mall. The contract provides that the kiosk will be bolted or otherwise fastened to the mall floor. Tax applies to sales or uses of materials used by A in the fabrication and erection of kiosks. Tax does not apply to the cost of A's labor. However, tax applies to the labor cost of fabrication of materials by persons other than A. 6/30/94.

**190.0480 Landscape Contractors.** Landscape gardeners, who enter into lumpsum contracts for landscaping in which they furnish plants, trees, etc. are governed by the provisions of Regulation 1521, "Construction Contractors." The installation of a lawn is an improvement to realty and the contractor is the consumer of materials utilized and subject to tax thereon.

Shrubs and plants used in connection with landscaping contracts are similar to "fixtures." A landscape contractor is the retailer of plants and shrubs he/she furnishes in connection with his/her services, and tax applies to the sales price of

such plants and shrubs. In the case of lump-sum contracts, the selling price of such shrubs and plants is regarded as the cost price. If plants or shrubs have been grown or produced by the contractor, the cost price is deemed to be the price at which similar plants or shrubs in similar quantities ready for installation are sold by the contractor to other contractors.

If a landscape contractor purchases such plants and shrubs from nurseries and pays sales tax on those purchases, and makes no use of them (other than retention, demonstration, or display while holding them for resale in the ordinary course of business), he/she is entitled to a deduction for “tax-paid purchases resold.” 3/25/53; 4/18/66; 1/14/85. (Am. 2004–2).

**190.0510 Manufactured Homes.** Where manufactured homes are neither mobile homes nor factory-built housing, as defined in Regulation 1521.4, they do not qualify under the provision of the Sales and Use Tax Law that governs the application of tax to mobile homes and factory-built housing. Instead, tax applies as explained in Regulation 1521, Construction Contractors.

Therefore, when a sale is made to a consumer (a person who will not resell the unit), tax applies to the full sales price. When the unit is sold to a construction contractor who will furnish and install the unit, the contractor is the consumer of the materials in the unit and the retailer of the fixtures in the unit. The contractor could, if he or she chose to, issue a resale certificate with regard to the sales portion of the unit applicable to the fixture. The sales portion of the unit applicable to materials and fabrication labor remains taxable. However, when making a sale to a construction contractor, the total sales price should be regarded as taxable unless the contractor issues a timely and valid resale certificate to the manufacturer.

If the manufacturer contracts to furnish and install a unit it produces, the manufacturer would be a construction contractor and tax would apply as explained in Regulation 1521. The manufacturer would be the consumer of materials and sales or use tax would apply to the purchase price of those materials. The manufacturer would be the retailer of the fixtures furnished and installed as part of the unit and it would owe sales tax on those sales. The measure of that tax is the manufacturer’s “cost price” as that term is defined by Regulation 1521 (b)(2)(B). 12/9/92.

**190.0520 Marble Walls.** An out-of-state corporation which quarries its own marble and installs it to form the walls of a California building will incur no sales or use tax liability, for since the marble is installed by the corporation to become an integral and inseparable part of the completed structure, the corporation is not regarded as selling the material but rather as the consumer thereof; further, since the marble is acquired from its own land there is no liability for the use tax. 5/17/62.

**190.0521 Material Excavated from Quarry Owned by the Contractor.** A licensed California contractor owns a rock, sand and gravel pit as well as the machinery to crush and screen the native rock, sand and gravel into materials used in constructing roads, bridges and like structures. The contractor enters into a contract to construct a highway in California with another party, other than the

United States, and supplies and installs all the construction materials using its own rock, sand and gravel pit reserves, labor and equipment.

The construction contractor is generally the consumer of materials it furnishes and installs in the performance of a construction contract, and either sales tax or use tax applies to the sale to, or use of, the materials by the contractor. The contractor owes tax with respect to its purchases to perform the contract measured by the purchase price of such material, unless the contractor previously paid tax or tax reimbursement on its purchase of that material. The tax or tax reimbursement reported or paid is measured by the sales price to the contractor and not by the contractor's gross receipts from its sales to its customer. However, the contractor does not acquire the rock, sand and gravel by purchase when it produces these materials by excavating its own quarry. In such cases, the use tax does not apply to the contractor's use of its own rock, sand and gravel.

Tax also does not apply to amounts related to the crushing of rock when the contractor crushes rock it excavates from its own quarry or purchases from a third party for use in performing a lump sum construction contract for its customer. The processing that the contractor performs on its own rock is not part of the amounts the contractor may pay to acquire the rock. Consequently, the contractor's cost of crushing the rock it owns is not subject to tax when the contractor thereafter consumes this rock in the performance of a construction contract. If the contractor however subcontracts the crushing of the rock to a subcontractor, the subcontractor is performing taxable fabrication. The subcontractor is required to report and pay tax measured by its charges and may collect tax reimbursement from the contractor if the contract of sale so provides. 4/30/03. (2004-1).

[190.0522](#) **Materials Used in "Overhead Processes."** A construction contractor uses materials for corrective work, warranty repairs, modifications and makeovers for no additional charge to the customer. The contractor is the consumer of such materials and sales or use tax applies to the purchase price. 10/7/93.

[190.0525](#) **Mobile Homes.** Mobile homes placed on permanent foundation systems qualify as real property for sales and use tax purposes. To be classified as being on a permanent foundation system, the mobile homes must be fastened or pinned to the foundation. 10/18/90.

190.0526 **Mobile Home Accessories.** Accessories are attached to mobile homes which are not on permanent foundation systems. The accessories are considered to be tangible personal property. Examples are: window awnings, skirting even though it may also be attached to the ground, and air conditioning units affixed solely to the mobile homes. Since these accessories are personal property, the retailer of these accessories may purchase them free of tax by issuing resale certificates to its suppliers. The retailer's charges for the carports and decks which are permanently attached to the foundation are considered to be improvements to realty and the installing contractors are the consumer of the materials which go into their construction. 10/18/90.

190.0535 **Office Boat.** A floating office was constructed on a concrete hull and moored to pilings by chains. All utilities and services are attached to the pier. The floating office does not have a v-shaped or cantered bow and is thus not designed for

navigation. At time of construction, it was intended to remain in one place and has remained there for over ten years.

Based on these facts, the office boat is not a vessel. Furthermore, it is concluded to be real property in that it was designated from its inception to function as an office building and has the attribute of realty in respect to permanency of location. Accordingly, tax does not apply to the in-place sale of the office boat. 8/20/91.

**190.0538 Oil Well Cementing.** A specialty contractor does cementing work on abandoned and new oil wells. The cementing of abandoned oil wells requires a series of cement plugs at varying levels in the well. Wet cement (ready mix) is delivered to the jobsite and injected into the well either through a chute attached to the truck or by pumping. When a required level has been plugged, other fluids are injected to fill the void between the plug and the next level at which a plug is required. New oil well cementing occurs when unwanted fluids must be blocked. Dry mix is blown out of its container where it is hit by a jet stream of water, mixing the cement into a buttermilk consistency. The mixture is then pumped into the well.

These contracts are construction contracts for improvement to realty. Assuming the contractor has a lump-sum contract to furnish and install cement into its customer's oil wells, the contractor may purchase the cement tax paid. Thereafter, the contractor's lump-sum charge to its customer is not taxable. If the contractor separately states charges on its bill to its customers for items such as transit mix, pumping or hook up, these charges do not become taxable as long as the contract is a lump-sum contract to furnish and install the cement for its customer.

The cementing is highly specialized and cannot be reused for a different well or job. If a customer cancels an order and does not receive the cement, the contractor bills the customer for the cement at a marked-up price.

Assuming the contractor has entered into a lump-sum construction contract to furnish and install the cement, when the contractor (a consumer of the cement) blends the cement for the construction job, it is making a use of the cement other than a retention, demonstration, or display of the cement while holding the cement for sale in the regular course of business. Therefore, the contractor, as a consumer making a use of the cement purchased tax paid, is not entitled to a "tax-paid purchases resold" deduction for this cement. 2/6/89.

**190.0540 Oil Wells.** Contracts for cementing, plasticizing and acidizing of oil wells are contracts for the improvement of realty. 10/27/50.

**190.0545 Owner of Quarry—Supplier and Prime Contractor.** A licensed construction contractor, who has its own quarry, entered into a contract with a city for the construction of streets, curbs and gutters. The contractor hires a subcontractor to receive and install materials supplied by the contractor. Some of the materials, rock and aggregate would come from the contractor's own quarry.

Since the contractor is a licensed construction contractor and has full responsibility for doing the street work regardless of the performance of the subcontractor, the contractor would be considered the consuming construction contractor. Accordingly, sales or use tax will be incurred on materials purchased

by the contractor for use in performance of its construction contract with the city. No sales or use tax liability will be incurred when contractor consumes material obtained from its own quarry. 10/11/89.

**190.0560 Outdoor Advertising Signs.** A large outdoor advertising sign erected upon land is a structure, and the contractor is the consumer of the materials used in the sign. Signs attached to buildings are considered fixtures, becoming real property upon being affixed. Since the tax applies to the sale of “materials” to the contractor and to the retail selling price of “fixtures,” in neither case should an exemption certificate be accepted from the purchaser of the signs. 11/7/64.

**190.0585 Owner of Gravel Pit is Supplier, Not Subcontractor.** Taxpayer, a licensed construction contractor, owned a gravel pit from which it extracted aggregate and sold the aggregate and road mix to other contractors. A prime contractor had a construction contract with a real property owner to furnish and install these materials. The prime contractor requested the taxpayer to submit alternative bids, one as materials supplier and the other as subcontractor. Under the bid as subcontractor, the taxpayer would charge the prime contractor an amount for applying the materials sold; however, the prime contractor would actually apply the materials itself and would also charge that same amount back to the taxpayer. The job contract would treat the taxpayer as the construction contractor so that no sales or use tax would be due on the taxpayer’s use of its own aggregate.

Since the prime contractor had the responsibility under its construction contract to affix the aggregate and road mix, and actually did so, the prime contractor is the construction contractor under Regulation 1521, not the taxpayer. The taxpayer is instead the seller of the materials and is not regarded as the consumer of its own aggregate. For sales and use tax purposes, the purported subcontract between the taxpayer and the prime contractor would be treated as a taxable sale of materials to the prime contractor, not as a contract for the taxpayer to furnish and install the materials. 2/19/88.

**190.0590 Parabolic Antenna Subsystem.** A contract to erect a large parabolic antenna subsystem to be affixed to land, including foundation, lower tower, site preparation, utilities and laying of cables to control building, is a construction contract. 5/4/67.

**190.0592 Parking System.** Installation of a parking system in a public parking garage, which consists of ticket issuing machines, automatic payment machines, exit reading machines, payment units and cashiering units that are interconnected by data and voice lines is a construction contract under Regulation 1521. The components are materials or fixtures. 2/14/90.

**190.0595 Playground Equipment.** Playground equipment which is secured to the ground via concrete post foundations is considered an improvement to real property. Where the equipment is built and installed at the job site and not prefabricated, the contractor is installing “materials” and the contractor is the consumer of the “materials” installed. Accordingly, tax applies to the purchase price of the material to the contractor as set forth in Regulation 1521(b)(2)(A). 10/16/92.

190.0597 **“Portable” Aircraft Hangers.** These aircraft hangers are in reality prefabricated modular buildings movable on the highway as a unit. Upon installation, the hangers are in the shape of a “T” as looked at from above. They are attached to the asphalt on which they rest by lag screws. The hangers are sealed to the ground by tar. They are wired to a metered electrical hookup.

Since the hanger is attached in a substantial manner to the realty, it constitutes an improvement to real property for sales and use tax purposes. A contract to furnish and install a portable hanger of the type in question is a construction contract.

However, where the unit is sold for installation by the purchaser (or by a contractor hired by the purchaser), the contract is not a construction contract, but is a contract for the sale of tangible personal property. The total price of the unit is taxable notwithstanding the fact that it may then be installed as an improvement to real property. 11/28/88.

190.0598 **Prefabricated Building.** A manufacturer of steel frame relocatable buildings makes the buildings in sections in the factory and assembles them on site. These buildings may be anchored to the foundation or may be held in place by their own weight and, although considered to be permanent, could be taken down and moved if necessary. They are, however, not easily transportable. Other specifics are:

- (1) Transportable size range is from 10x16x12 to 14x60x14.
- (2) Weight range is from 10,000 lbs.–30,000 lbs.
- (3) Square footage of buildings range from 160 sq. ft. and beyond.
- (4) Building foundations will be either pressure treated lumber or concrete (slab or pierced) similar to that of residential or commercial foundations.
- (5) The 12x16 and 12x28 might be used to house communications equipment.

The above facts indicate that the buildings in question are of considerable size (i.e., larger than a building customarily thought of as a “shed” or “kiosk,”) are built at the factory in sections, and are then moved to the site where they are assembled. They do not appear to be capable of being moved as a unit. The manufacturer’s contracts to assemble and install such buildings qualify as construction contracts under Regulation 1521 whether or not the buildings are physically attached to realty or rest there on their own weight. 11/6/91.

190.0599 **Prefabricated Stalls and Horse Barns.** A taxpayer manufactures and installs prefabricated stalls and horse barns. The barns are at least 10 feet high and weigh 2,500 pounds or more. The stalls are free standing and readily removable. The size and weight of the barns cause them to be regarded as improvements to realty. Tax applies as it would in other types of construction contracts. This conclusion does not apply to Port-A-Stall pipe corrals which are free standing and readily removable. The stalls are regarded as tangible personal property the sale of which is subject to tax on the total amount charged less installation. 3/31/80.

190.0600 **Prime Contractor Selling to Subcontractor.** When a California subcontractor is unable to obtain certain materials and they are acquired out-of-state by the

principal contractor and shipped and charged to the subcontractor, it is a taxable sale as the subcontractor is deemed to be the consumer of such materials. 3/2/53.

**190.0630 Prefabricated Modular Rooms.** Contracts for prefabricated modular rooms to provide shielding from radio frequency radiation are regarded as construction contracts if the rooms are firmly affixed to the realty, with the intention of making a permanent addition thereto, but are contracts for the sale of tangible personal property if the rooms are not so affixed to the realty. If the transaction is a sale of tangible personal property, the cost of labor to assemble the room on site is subject to tax because it is fabrication labor rather than exempt installation labor. 7/26/79.

**190.0633 Prefabricated or Modular Nonschool Buildings—Purchases of Materials.** Contracts to furnish and install prefabricated or modular buildings which are not factory-built school buildings are construction contracts. With respect to sales of materials to the contractor made out of state, these transactions would not be subject to California sales tax. However, as the consumer of the materials furnished and installed in the performance of a construction contract in this state, the installing contractor will owe California use tax on the cost of the materials to it. The installing contractor may claim a credit under section 6406 against the amount of California use tax it owes to the extent it has paid a retail sales or use tax, or reimbursement therefore, with respect to that property imposed by another state. 2/27/98. (M99-1).

**190.0640 Reconditioning Road Surface.** A contractor is a consumer when he rips up the old road surface, mixes the surface with road oil and spreads the resulting mixture to form a reconditioned surface. 5/28/57.

**190.0660 Refrigeration Contracts.** A refrigeration subcontractor is the retailer of “refrigeration units,” and the tax applies to the retail selling price thereof. This price does not include, however, additional charges separately billed for the installation of the units. Even where a lump-sum charge is made, the retail selling price is regarded as the cost price of the fixtures to the contractors, or if the contractor is the manufacturer, the retail selling price is regarded as the prevailing price at which similar fixtures and similar quantities ready for installation would be sold to contractors. Generally, labor “on the job” is installation labor, although not necessarily so in all cases. Where the completed unit is assembled or partially so at the job site, any labor for such assembly is properly regarded as processing or fabrication labor and as such the charges therefor are included within the measure of the tax, as a part of the sale price of the assembled or completely fabricated article. The labor of installing that article is, of course, not subject to the tax. When feeder lines run through floors, ceilings, and walls of the structure, being encased therein or securely attached thereto, these lines and the valves and fittings constituting a part thereof may be treated as “materials.”

Where the refrigeration contractor furnishes no fixtures or materials but merely performs the labor and services of installation, the amounts charged by him are not taxable, unless prior to installation he actually performs processing or fabricating work, resulting in the production of the complete fixture or other article of tangible personal property from materials furnished to him. Where he

also installs such property, he would be regarded as the consumer of that which might be classified as “materials,” in which case his charges would not be taxable. If he both processed a fixture and installed it, he would be subject to tax on that portion of his charge attributable to processing. 4/17/50.

[190.0675](#) **Refurbish Hydroelectric Turbine.** A taxpayer contracts to repair or recondition a hydroelectric turbine in place or if necessary to remove it for repairs, the contract requires the taxpayer to reattach the turbine to the realty. Such contracts are construction contracts to improve realty. Since a hydroelectric turbine is a fixture, the contractor is the retailer of the parts furnished to repair the turbine when the sales price of the parts is billed separately from the repair labor. On the other hand, the contractor is the consumer of the parts furnished if the repair contract is a lump-sum construction contract to repair a fixture. 9/27/95.

[190.0700](#) **Reinforcing Steel Contractors—Tilt-up Walls.** In constructing a concrete building with tilt-up walls, a building contractor constructs wall forms on the ground at the jobsite. A reinforcing steel contractor places reinforcing bars (rebars), which he has cut to appropriate lengths, into the forms. The ends of the rebars protrude from the sides of the wall forms. The building contractor next pours concrete into the forms and over the rebars. After the concrete hardens, the building contractor removes the forms and tilts the wall panels into place. The reinforcing steel contractor then installs column steel rods with metal stirrups between adjacent panels, and he wires and welds the overlapping ends of rebars which extend across the space occupied by the column steel. The building contractor then places pouring forms between the adjacent panels and fills the space with concrete.

Since the reinforcing steel contractor performs his functions with respect to the construction of the walls of the building from fabrication of the panels to installation in their final resting place he is a construction contractor with respect thereto. Accordingly, the rebars, column steel, and stirrups are regarded as materials which he consumes in constructing improvements to realty. 10/4/67.

[190.0720](#) **Reinforcing Steel Tilt-up Walls.** A manufacturer of reinforcing steel places the steel in horizontal forms in which a contractor pours concrete for slab walls. When the slab hardens, the contractor removes the forms and sets the slab in position in its final resting place as the wall of a building. Inasmuch as the concrete slabs are not in their final resting place when the manufacturer places the reinforcing steel, he is regarded as fabricating a concrete slab and his entire charges are subject to sales tax. 8/30/65.

[190.0740](#) **Relocatable Classrooms.** Latchkey/preschool program buildings are not designed or intended for use as school buildings and are not classified as factory-built school buildings. Therefore, the furnishing and installing of such buildings constitutes construction contracts on which the manufacturer will owe tax on materials and fixtures. 3/1/90.

[190.0747](#) **Repair of Fixtures.** A firm is in the business of repairing fixtures such as heating, ventilation and air conditioning units. It contracts with the customer and then subcontracts with others to do the actual work. The firm collects from the customer and pays the subcontractor a predetermined distribution.

Assuming the items repaired are fixtures which, if removed for repair are reinstalled by the subcontractor, the subcontractor is the consumer of all parts furnished in the performance of a lump-sum contract. If subcontractor bills the sales price of the parts separately, it is the retailer of the parts and it may not accept a resale certificate from the firm with whom the customer contracts. 5/22/97.

**190.0750 Repair of Signs.** A construction contractor contracts to repair a sign that is a fixture. The contractor will repair it in place or will repair the sign and then reinstall it. The contractor is performing a construction contract. If the contractor bills in lump sum, it is a consumer of any parts and materials furnished to repair the sign, and tax applies to the sale to the contractor or to the contractor's use. If the contractor makes a separate charge for the parts and materials furnished to repair the sign, the contractor is the retailer of such property and tax applies to that separate charge. 10/24/96.

**190.0760 Reredos,** contract to erect in church is construction contract, and contractor is consumer of materials used. 2/16/50.

**190.0765 Resale Certificate Furnished to Contractor.** Regulation 1521(b)(2)(B) provides that construction contractors (other than United States contractors) are retailers of fixtures which they furnish and install. Section (b)(2)(B)3 recognizes the only exception to this rule to be when the contractor furnishes and installs 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. Under these circumstances the 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 certificate should indicate that the fixture is purchased by the lessor for resale by the purchaser as tangible personal property under section 6016.3 of the Revenue and Taxation Code.

Section (b)(6)(A) provides that in this instance only the contractor may take a resale certificate for a fixture which he furnishes and installs. He cannot take a resale certificate from the prime contractor. 5/24/76.

**190.0820 Rock Fill Materials.** A contractor purchased rock fill material at a unit price per ton, the material to be dumped by supplier at designated locations. All spreading, leveling and rolling will thereafter be done by the contractor.

Normally, a person furnishing such a product is considered a consumer of materials, but in the above instance, the supplier is a retailer and the sales tax applies to the selling price of the materials. In order for the supplier to be regarded as a consumer of the fill it would be necessary for him to actually do all of the spreading, leveling, and rolling of the material at the construction site, thus improving real property. 8/7/53.

**190.0825 Sale of Materials to Construction Contractor for Indian Tribe.** An Indian tribe designates a construction contractor to be its agent for purchases necessary to acquire tangible personal property for a construction contract to be performed on the Indian reservation. The subcontractors and vendors are required to bill the Indian tribe, care of the prime contractor/purported agent. The contract requires

the subcontractors and vendors to ship all the materials purchased for the construction project directly to the Indian tribe's reservation. Final delivery of the materials will occur on the reservation and title to the materials will pass to the Indian tribe prior to any use by the contractor.

The Restatement Second of Agency, section 14 N, describes the above relationship between the Indian tribe and the purported agent as one of a "non-agent independent contractor." A person who contracts to accomplish something for another or to deliver something to another, but who is not acting as a fiduciary for the other, is a non-agent contractor. Even if the relationship was considered to be a true agent relationship, the decision of *U.S. vs. New Mexico* (1982) 455 U.S. 720, 736 prevents the Indian tribe from exercising its sovereign immunity from sales and use tax liability through an agent. (Sales and Use Tax Annotation 305.0009.)

Therefore, the subcontractors and vendors may not accept an exemption certificate signed by the purported agent for materials purchased for use in the construction project, because the materials are not sold to the Indian tribe directly. Should the purported agent nevertheless provide an exemption certificate to the subcontractors and vendors, the good faith requirement of Regulation 1667(b)(1) would not be met and the certificate would not relieve the subcontractor or vendor for liability for sales tax resulting from the sale of the materials to the purported agent. 5/8/03. (2004-1).

**190.0828 Sales of Decorative Rocks.** A company in the decorative rock sales and design business purchases rock from quarries and rock supply dealers. The rock is stored in a holding yard. Rock is sold to customers with tax charged on this amount. Equipment such as a crane truck, forklift, and flatbed trucks are rented. This charge is segregated on the invoice. A separate charge for a delivery fee is made. A charge is also made for consultation in the design process, planning of design, and a visual scene from a drafting method for the rock placement. Tax is not charged on the charge for equipment rental, delivery, or consultation.

Assuming that the company places the rocks and spreads the rocks used as ground cover on the customer's property at the locations specified in the landscape plans, the contract the company has with the customer is a construction contract. A construction contractor who provides materials (decorative rock) is the consumer of the materials furnished and installed in the performance of a construction contract. An exception to this rule is when materials are furnished pursuant to certain "time and material contracts" where a charge for the materials and a separate charge for installation of those materials are set forth. If title to the materials explicitly passes to the customer under a time and material contract prior to installation, the contractor is the retailer of the materials. If the contractor bills the customer for "sales tax" on the charge for the materials (which must at least equal the contractor's cost of the materials) under a time and material contract, the contractor is the retailer of the materials. Assuming the charges for the rocks and the charges for "sales tax" are stated separately to the customer, the company is the retailer of the rocks, and the "gross receipts" from the sales of the rocks are subject to sales tax.

If the sale of rocks is taxable under the time and material contract exception, the taxable gross receipts from the sales of rocks include the charges for transportation unless the requirements of Regulation 1628 are met. The company does not meet the requirement unless there is an explicit agreement in writing with each customer that title to the rocks will pass prior to delivery. Therefore, the transportation charges, including rental charges for equipment, are subject to tax. 2/26/92.

**190.0829 Sale and Installation of Plantation Shutters.** Customers contract with Company A, a home-improvement retailer, for the sale and installation of plantation shutters for a lump-sum price. The plantation shutters are similar in form and function to venetian blinds or shades and therefore are considered to be fixtures. Company A arranges with an independent and unrelated subcontractor for the furnishing and installation of the plantation shutters for a lump-sum price. Since the subcontractor, not Company A, will actually furnish and install the plantation shutters, the subcontractor is the “contractor” referred to in Regulation 1521(b)(2)(B). In general, a subcontractor cannot avoid tax liability for tax on the sale or use of materials or fixtures furnished and installed by the subcontractor by taking a resale certificate from the prime or general contractor. (Regulation 1521(b)(6).)

Therefore, the sale by Company A to its customer is not subject to tax when the subcontractor both furnishes and installs the plantation shutters. As the general contractor in the above scenario, Company A is neither the retailer nor the consumer of the materials and fixtures, and it may not properly collect sales tax reimbursement or pay the sales tax. The subcontractor is the retailer of the plantation shutters and must report and pay tax to the Board measured by the sale price of the fixture to Company A. 7/21/04. (2005–2).

**190.0830 Sales of Shutters to Related Entity.** A taxpayer manufactures, sells, and installs shutters in residences. The taxpayer sells both directly to residential customers and to independent home improvement-type stores. In each instance, the installation of the shutters is performed by the taxpayer. The taxpayer’s sales to the stores are at a lower price than its direct sales to residential customers, and the taxpayer separately states installation charges to the stores. However, installation is included in the purchase price to the customer, whether the customer has contracted with a store or directly with the taxpayer. Taxpayer currently treats the shutters as fixtures and charges sales tax on the price at which it sells the shutters to the independent companies, exclusive of installation charges.

The taxpayer proposes to establish a new sales company (separate entity) which will be 95% owned by the taxpayer. The new company will purchase shutters from taxpayer and make sales of shutters to customers, but the installation will continue to be done by taxpayer at a fixed installation charge. The taxpayer will sell the shutters to the new company at a price similar to the price at which it sells to independent companies. In short, the new company will consummate the sales transaction with the customer, but the taxpayer will actually furnish the shutters and install them. The question raised is whether the measure of sales tax should

be the price charged to the sales company for the shutters exclusive of installation charges.

The transfers between related parties (e.g., between a corporation and a majority-owned subsidiary corporation) are generally disregarded for sales and use tax purposes if they are not structured as if at arms length. However, if taxpayer and its related new entity conduct their transactions with each other as if at arms length, their transactions would be treated in the same manner as transactions between the taxpayer and the independent home improvement-type stores. The sale of shutters by taxpayer to the new company would be considered as arms length transactions if taxpayer's sales to the new company are made at the same or equivalent price as its sales to unrelated stores. If such is the situation, sales to the new company may be treated in the same manner as taxpayer's sales to independent stores for sales and use tax purposes. 6/3/97.

**190.0835 Satellite Antenna.** The furnishing and installation of a satellite antenna for the U.S. government is a construction contract under Regulation 1521. All components of the antenna and its operating system are classified as either materials or fixtures. 11/29/84.

**190.0837 Satellite Earth Station Antenna.** An antenna, which is 105 feet in diameter and weighs approximately 200 tons, will be constructed to meet California earthquake standards. It rests on steel reinforced concrete and is erected much like a steel building or bridge. Removal is clearly not contemplated by the contract or the parties. The antenna is an improvement to real property and tax applies in accordance with Regulation 1521. 4/1/81. (Am. 2002-2).

**190.0840 Sculpture.** Taxability of commissioned sculptured works of art for specific landscape designs depends upon the nature of the merging of the work with the place of installation insofar as the identity of the work of art is concerned. If the work of art becomes an integral and inseparable part of a building, thus losing its identity like a mosaic tile mural applied on the wall piece by piece, the artist is the consumer of the materials used and tax is applicable to the sale of the materials to the artist. If a sculptor attaches his completed work of art on a wall with a bolt, the work of art is a fixture because it becomes an accessory to the building and does not lose its identity as an accessory when installed. The sculptor is the retailer of the fixture, the retail price of which is taxable. 10/23/69.

**190.0844 Sculpture.** An artist was commissioned by a county to design, fabricate and install a piece of sculpture at a Health Service Complex. The sculpture is a three dimensional work of art which was designed for a specific site on the grounds of the complex.

In general, the sale and installation of a commissioned piece of sculpture is consistent with the definition of a construction contract per Regulation 1521. As such, the tax treatment depends upon the degree to which the artwork is integrated into or merged with a building. If a piece of sculpture maintains its integrity and identity even after installation, the sculpture is a fixture and the artist who furnished and installed the sculpture is a retailer. However, in this case since the sculpture is an original work of art purchased by a county and displayed in an area open to the public, the sale is exempt from tax pursuant to section 6365. 8/8/89.

**190.0860 Separate Documents Covering Furnishing and Erection.** A contract for furnishing and erecting a structure may consist of two separate documents, one calling for the furnishing of the structure or parts and the other calling for their erection. The mere fact that two separate documents are involved does not require the conclusion that Regulation 1521 is inapplicable where the intent as evidenced by the dates on the contracts, or otherwise, is shown to be that the obligation is both to furnish and erect the material. 11/20/64.

**190.0870 Septic Tanks.** A person who, under a lump-sum contract, furnishes and places a septic tank in its final resting place with no further movement being made of the tank, is regarded as a construction contractor, whether or not he attaches the leach lines to the septic tank. 8/19/75.

**190.0914 Shelving, Installation of.** Charges for installation labor are not taxable, whether or not they are separately stated. Labor for providing shelving is regarded as taxable assembly labor rather than installation labor, unless part of the shelving is attached to the real property and the remaining components of the shelving are sequentially attached to the part already attached to create the shelving. 8/14/79.

**190.0925 Signs as Fixtures.** A contract for the sale and installation of large Styrofoam letters, installed by gluing them to a building, is a construction contract and the letters are fixtures. The contractor is the retailer of the fixtures, and the measure of tax is detailed in Regulation 1521(b)(2)(B). 3/8/90.

**190.0935 Solar Window Tinting and Vinyl Pinstriping.** A taxpayer requested information regarding the sales tax application for applying solar window tinting and vinyl pinstriping to commercial storefront windows, homes, cars, boats and airplanes. The customers are billed for a single lump sum, with no separate itemization of materials and labor.

When tinting or pinstriping real property, (store-front windows and homes), the taxpayer is a construction contractor and the consumer of such property. The sale of the property to the taxpayer, or the use of the property, is subject to sales or use tax.

At the time of performing the tinting, it is assumed that the windows are component parts of used, rather than new vehicles, vessels, and aircraft. Based on this assumption, the taxpayer is performing repairs. Since there is no separate charge for the property, furnished in connection with the repairs (tinting), the taxpayer is the consumer of such property if the retail value is 10 percent or less of the total charge. The sale of the property to the taxpayer, or the use of the property, is subject to sales or use tax. When the retail value of the property furnished in connection with the tinting is more than 10 percent of the total charge, the taxpayer is the retailer of such property, and must segregate on the invoices to the customers, the fair retail selling price of such property.

Pinstriping cars, boats and airplanes is considered the same as applying lettering to these items. Lump sum charges for pinstriping vehicles, vessels, and aircraft are not subject to tax. Sales tax reimbursement should be paid when purchasing the items applied as pinstriping. 8/25/92.

**190.0960 Steel Fabricator as Retailer.** Although a steel fabricator may be the consumer of reinforcing bars which he installs by wiring onto the ends of masonry steel previously installed within concrete block walls by a masonry contractor the steel fabricator is the retailer of masonry steel which he does not install at the jobsite in its final resting place. 12/21/67.

**190.0976 Subcontracting—Furnishing/Installing Cabinets.** A enters into a contract with C to furnish and install prefabricated cabinets (fixtures) for a lump-sum price of \$10,000. A enters into a subcontract with B for B to manufacture and install the prefabricated cabinets. A prepares the plans, and B then manufactures and installs the cabinets. A or B will bill C for the amount of the contract price.

The basic rule in determining who is the contractor regarded as the retailer of the cabinets, A or B, is that the last person who has the true responsibility to furnish as well as the true responsibility to install the cabinets is the construction contractor/retailer with respect to the cabinets. Here, since A subcontracts both the furnishing and installing of the cabinets, its subcontractor, B, is the last person who has the true responsibility to both furnish and install the cabinets, and is the construction contractor/retailer. (Regulation 1521(a)(1)(B) 2.) Since the contract between A and B does not state the sales price at which B sells the cabinets, the sales price is deemed to be the cost price of the fixtures to B, determined pursuant to the provisions of Regulation 1521(b)(2)(B)2.b.

In this situation, A has no tax liability. Since B is the retailer, it owes sales tax on its sale of the cabinets. A may not issue a resale certificate for the cabinets. 11/1/95.

**190.0980 Subcontractor Using Contractor-Furnished Materials.** When a general contractor furnishes “materials” used in improving realty to subcontractor who does actual work, and subcontractor does not actually purchase the “materials” from the general contractor but is merely paid a flat price for the work, the general contractor is regarded as the consumer of the “materials.” 10/24/52.

**190.1000 Super Slides.** Super Slides, structures several stories high consisting of a metal tubing framework which are erected on concrete foundations and are permanently affixed to the realty, are improvements to realty. Accordingly, the contractor is the consumer of the materials used in erecting the Super Slides. 1/2/68.

**190.1010 Supervision of Installation.** A taxpayer who is an engineer provides heating and air conditioning computerized control system components. The taxpayer selects and assembles the control units, programs the units, supervises the installation and is onsite to start up and troubleshoot the installation. The installation is actually performed by the mechanical contractor. The taxpayer’s quotes are lump sum, including all taxes.

Although the taxpayer performs some supervision, he is not contractually obligated to install the property. Thus, the taxpayer is not performing a construction contract, and is not a construction contractor within the meaning of Regulation 1521.

Although the taxpayer may design the control system, the true object sought by the customer is the control system, not the engineering service. Therefore, the transfer of the control system is a sale of tangible personal property. 1/20/94.

**190.1020 Supplier of Materials.** A taxpayer would obtain a quote from a third party contractor who would install the property furnished by the taxpayer. The taxpayer would place its bid and communicate that quote amount to the general contractor. The general contractor would then issue a purchase order to the taxpayer for the bid amount less the installation amount. The prime contractor would directly contract with the subcontractor at the quote price of the installation communicated by the taxpayer to the prime contractor.

In this case, the taxpayer acted only as the supplier of materials under purchase orders issued by the prime contract since it did not have any responsibility nor any control over the installation of the materials it provided. 2/9/96.

**190.1040 Tanks.** Tanks with a 500 barrel capacity and larger which are erected at the jobsite from prefabricated parts are regarded as improvements to realty. The contractor is the consumer of material used. 1/22/59.

**190.1047 Telephone Lines.** Section 6016.5 of the Revenue and Taxation Code provides that telephone lines and the poles, towers, or conduit by which they are supported, are not tangible personal property within the meaning of the Sales and Use Tax Law. However, the components are regarded as tangible personal property before they are incorporated into the telephone lines. Accordingly, the sale of the components to the installing contractor is subject to tax. 4/4/75.

**190.1050 Telephone Switching Equipment.** A sale of “off the shelf” general purpose telephone switching equipment, sold for use in general purpose office buildings, is considered machinery and equipment. Accordingly, the sale to the U.S. Government is exempt if there is no use, of the equipment, by the contractor prior to the sale. 12/18/89.

**190.1055 Telephone System.** A company purchases a telephone system from a contractor who will furnish and install the system at the company’s client’s location. The sales agreement between the company and the contractor showed that the lump-sum selling price included sales tax. A subsequent breakdown furnished to the company by the contractor showed an allocation for cost of fixtures and materials plus sales tax thereon and an amount for the remainder of the contract. Company planned to lease the equipment or sell it to its client.

If the agreement is a true lease between the company and its client, it would be a lease of fixtures that are attached to real property not owned by the lessor. Since the company did not provide the contractor with a resale certificate and sales tax was paid with respect to the telephone system to company, no tax would be due with respect to the company’s lease of the system to its client. If the company thereafter sold the system to its client, i.e., upon exercise of an option by the client, sales tax would apply measured by the sales price.

If the agreement between the company and its client were an outright sale and the contract was in place prior to the installation of the system by the contractor, and title passed to the client immediately upon installation, the transaction would be

regarded as a construction contract and the installed property would constitute real property. No further tax would be due other than that included in the agreement between the company and contractor. 1/20/88.

(Note: The classification of certain telephone equipment was modified by an amendment to Regulation 1521 effective July 1, 1988. An example of the change is contained in Annotation 190.1050.) (Am. M98-3).

**190.1060 Temporary Fair Exhibits** are not improvements and retailer is taxable on his gross receipts, without deduction for charges for construction and assembly, but not including separate charges for installation. 4/17/50.

**190.1080 Trenches.** Where a contractor either performs, subcontracts, or supervises, the digging of trenches, laying of irrigation pipe line, and backfilling, it constitutes the performance of a contract to improve real property. Accordingly, the contractor is the consumer of the materials used and the cost thereof is taxable. 11/17/54.

**190.1083 Trusses.** A company manufactures and sells trusses to general contractors who build custom homes. The contractors provide plans and specifications and the company assembles the trusses. There are two types of trusses: (1) less than 25 feet across which are banded together and dropped off at the customer's job site, and (2) larger trusses which have to be delivered to the job site in the company's truck and then the truck's boom is used to hold the trusses in place while the contractor's construction crew secures the trusses to the support beam. A transportation fee of \$100 is charged to each contractor. For the larger trusses, the boom operator (truck driver) holds the trusses in place while the construction crew secures the trusses.

There are no contracts which require the company to furnish and install the trusses. The contract only provides that the trusses will be delivered for a \$100 fee. There is no indication that the company must install the trusses. The contractor is charged \$100 for delivery of the trusses but there is no indication that the driver of the truck who operates the boom has any unique expertise relating to the attachment of the trusses. In the present case, any boom operator could be hired to raise the trusses so that the crew could attach the trusses to the support beams. It is concluded that the company is not a construction contractor because it is not, pursuant to a construction contract, required to furnish and install tangible personal property.

There is no contract which calls for title to pass prior to delivery, so unless the trusses are realty at the time title passes, the transportation charges are taxable. The boom operator lifts the trusses up to the support beams so the construction crew can manipulate the trusses into place and secure them to the support beams. Once this crew takes control of the trusses, delivery takes place and title passes. At this point, the trusses are not realty. It is concluded that title to the trusses passes before the trusses become affixed to real property and that the transportation charges are subject to tax. Even if title did pass after the trusses were affixed, the tax result would be the same. It is well established that for the purpose of California's sales tax, the sale of personal property is nonetheless

subject to sales tax even though affixed to the buyer's land. (*United States Line, Inc. v. State Board of Equalization* (1986) 182 Cal.App.3d 529.) 4/29/91.

**190.1086 Unlicensed Contractor.** The fact that a person is not licensed as a construction contractor does not mean that it cannot be defined as one for the purpose of sales and use taxes. The Sales and Use Tax Law does not distinguish between entities that are licensed and those which are not. It only looks at the transaction between the parties. Therefore, a person acted as a construction contractor when it furnished and installed the fixtures. 3/21/95.

**190.1088 Utility Vaults—Final Resting Place.** Precast concrete utility vaults are delivered in the seller's truck and lowered by the driver into an excavation prepared by the buyer. The buyer is required to do the excavating and grading. The contract also provides for "location and alignment by buyer." The buyer is then obligated to backfill the hole, connect piping, and cover to grade. In these circumstances, the seller has performed a construction contract and is the consumer of the materials used in making the concrete vaults. This is similar to the treatment given persons who furnish and place septic tanks in their final resting places. The vault is a structure and erecting the vault in its final resting place is a construction contract. 4/13/76.

**190.1090 Vacuum Hoses Used with In-Place Suction Inlets.** Vacuum hoses which have suction inlets located at various places in a building and are designed to be easily inserted and removed from the inlets during the use of the hoses for cleaning are not affixed to the realty and thus do not become improvements to real property on installation but remain tangible personal property. Therefore, a contract for their sale and installation is not a construction contract. The sale of the hoses together with all accessories attached to the outboard end of the hoses is to be taxed as a sale of tangible personal property. 11/1/74.

**190.1097 Walk-In Refrigeration Units.** A company manufactures walk-in coolers (also called cooler boxes, freezer, or refrigeration "rooms.") Much of the work is as a subcontractor for the prime refrigeration contractor. The company manufactures prefabricated panels and doors which are assembled at the job location into a "room" or coolers. The panels lock together and the cooler can easily be assembled or disassembled at the jobsite. Presumably, the prime refrigeration contractor or another of the subcontractors installs the refrigeration system after the manufacturer completes its work. For the sake of clarity, three classifications are followed in determining the proper application of tax:

(1) Freestanding, prefabricated, self-contained units manufactured at the manufacturer's plant and transported as complete units to the jobsite:

These are tangible personal property (or machinery and equipment) and tax applies to the gross receipts from this sale at retail. If these are furnished as part of a construction contract, the measure of tax is determined under the criteria set forth in Regulation 1521(b)(2)(C). Sales of these units to the United State are exempt from tax. The person selling these units may take a resale certificate for them from the prime contractor.

(2) Prefabricated units which do not lose their identity when installed, but are affixed to the structure in such a manner that they become fixtures. These units, when installed, are fixtures under Regulation 1521 but are treated as fixtures only in the hands of the person who affixes them to realty. In other words, these rooms must be connected to the coolant system before they are fixtures.

If all the taxpayer does is take prefabricated panels to the jobsite and then assemble them into a freestanding room, the assembled room is tangible personal property in the manufacturer's hands and when sold by the manufacturer even though it is a component of a fixture when affixed to the realty by someone else. The prime contractor who is required to furnish and install the assembled refrigeration room is the retailer of the fixture. The prime contractor may purchase the room under a resale certificate. However, when the prime contract A is with the United States, the sale to the prime contractor is a retail sale as set forth in Regulation 1521(b)(1)(A). If the same person assembles the panels into the freestanding room and also affixes it to the coolant system, the room is a fixture.

(3) A combination of materials and fixtures. As an example, sills are affixed to the concrete floor by nails and bolts. The panels are affixed to the sills panel by panel until the room is assembled.

The sills, wall panels, and doors are materials. The person furnishing and installing the panels is the consumer of the panels or if that person manufactures the panels, he is the consumer of the materials from which he manufactures them. The refrigeration units which include the compressor and evaporator are fixtures. Piping installed to connect the compressor with the room is materials. 8/4/77.

190.1100 **Water**, contract for furnishing and spreading during highway construction to aid in dust control and in compacting the road, at a stated price per 1,000 gallons, constitutes a contract for the improvement of realty and not the sale of tangible personal property. 8/9/50.

190.1120 **Weatherstrip and Insulation Contractors** are regarded as consumers of weatherstripping and insulation materials used in fulfilling their contracts. 8/1/50.

190.1140 **Well Drilling—Taxable Items**. The charge made by a contractor for drilling a well is not subject to sales tax. However, such contractor is a consumer of the materials such as casing used on such operation and tax applies to sale of such items to contractor. 12/30/53.

190.1155 **Wind Tunnel Model Support and Turntable System**. A taxpayer contracts to furnish and install a model support and turntable system used for testing aircraft for an agency of the U.S. government. The system rests on scales and is not connected to the wind tunnel structure in any manner. The system, although of large mass, is relatively easy to remove from the wind tunnel. It can be removed without damage to itself or the tunnel. It can be used for certain tests outside the wind tunnel, and the tunnel can be used for certain tests without the system. Accordingly, the system is regarded as machinery and equipment rather than as a fixture. 10/25/83.

190.1160 **Wind Tunnels.** A contractor fabricating and erecting a wind tunnel is the consumer of the materials involved. Sales tax applies to the sales price of such materials to the contractor. 6/12/56.

[190.1165](#) **Windmills Installed for the Generation of Electricity.** Installation of windmills on real property for the generation of electricity is a construction contract under Regulation 1521. The components used in constructing the towers on site and the power lines are “materials”. The windmill head consisting of rotor, axle, gearbox, microprocessor control unit and electricity generator is a “fixture”. 7/7/81.

[190.1180](#) **Window Suppliers.** A window supplier cannot qualify as a consumer unless, under the terms of the contract, he is obligated to install the window and is responsible for its proper installation. In such case, he may make the installation himself or engage a subcontractor who is other than the prime building contractor and consumer. If the window supplier installs the window under contract, he is the consumer. 11/4/64.

[190.1185](#) **Works of Art.** An artist is the retailer of art work which is classified as a “fixture.” Accordingly, an original work of art sold to a city and displayed in an area open to the public in a building is exempt pursuant to section 6365 notwithstanding that it is an improvement to realty. On the other hand, if the artwork is integrated into a building so as to become an integral and inseparable part of a building, such as a mosaic applied on a wall piece by piece, the artwork is “material.” In this case the artist is the consumer of the material and must pay sales or use tax on the material. 7/24/90.

190.1200 **X-ray Booths.** A construction company was the consumer of materials used in the construction of lead-lined X-ray booths consisting of prefabricated panels fastened together and to a concrete floor by metal bolts. Although the booths were designed to be dismantled and portable, they were of substantial size and permanence so as to be considered improvements to realty. 8/11/64.

**(b) SPECIFIC PROPERTY AS “MATERIALS” OR “FIXTURES”**

190.1214 **Aerial Platform.** A mechanical aerial platform is a steel structure affixed to rails which are attached with bolts to the supporting structure of a building. The platform moves horizontally along the rails by means of wheels and vertically by means of hydraulics. It is used to service large military aircraft.

The platform is a “fixture.” A contractor furnishing and installing it at a U.S. Air Force facility is the consumer of the platform. 9/30/88.

190.1217 **Air Conditioning Units.** Air conditioning units used to “cool computers” are fixtures and not machinery and equipment. When furnished pursuant to a contract with the United States, the contractor is the consumer making an improvement to real property. 2/26/90.

190.1218 **Air Distribution System.** Electrical parts and piping gaskets installed on an air distribution system which is affixed to realty and is used to start jet engines on a flight line are “materials,” not machinery and equipment. The contractor is the consumer of such property. 2/26/90.

190.1220 **Aluminum Louver.** An aluminum louver consisting of slats which are firmly attached to a supporting framework and when installed are not adjustable, but become almost a part of the wall of a building, is not a fixture and measure of tax is cost of “materials.” 7/13/53.

190.1230 **Aluminum Security Shutters.** Aluminum security shutters, i.e., strap, strap crank, crank, and electric, that are assembled and cut to size for use as both window and door coverings are regarded as “materials”, of which contractors, who furnish and install, are the consumers. The aluminum security shutters serve a function other than as venetian blinds or shades. Venetian blinds or shades only deflect light. The aluminum shutters have a function in addition to deflecting light in that they are important security devices. They completely close off the window or door opening, giving protection against vandalism and burglary. Aluminum Security shutters serve a function more analogous to “doors, windows, or partitions” than do “venetian blinds or shades”. Therefore, aluminum security shutters should be classified entirely as materials with one exception as to the security shutters of the electric type. The electric motor purchased in a completed condition to power electric security shutters, must be considered a “fixture” within Regulation 1521. 8/2/90.

190.1237 **Automatic Farm Irrigation System.** A master control box consisting of toggle switches and controls for orchard solenoid valves, a control panel that provides start/stop functions for pumps and turbines and level switches for deep-well pumps, and the cabinet to house the panels are considered fixtures under Regulation 1521. Accordingly, these items are considered sold (fixtures) under a construction contract and tax applies as outlined in Regulation 1521(b)(2)(B). 7/13/73.

190.1250 **Basketball Equipment—Indoor and Outdoor Courts.** The poles of outdoor basketball equipment which are embedded into the ground are considered “materials” and the backboards and the hoops are considered “fixtures.”

The pipe rails, hanging support, and back bar of indoor basketball equipment which are attached to roof rafters are “materials.” The backboards and hoops and the motors and lifting belts are “fixtures.” 8/8/95.

190.1260 **Beeswax, Tacks, Brads, Thread, Binding and Floor Covering Adhesive** used in installing carpeting and other floor coverings are “materials.” 3/9/51.

190.1280 **Blackboards** and bulletin boards built into and becoming an integral part of wall are “materials.” Prefabricated blackboards and bulletin boards attached to wall as unit by screws or nails are “fixtures.” 1/11/50.

190.1283 **Boilers and Compressors.** Boilers and compressors which are furnished and installed to become accessories to a building or other structure are fixtures as defined in Regulation 1521(a)(5). When the contractor furnishes and installs fixtures pursuant to contracts with the United States government, the contractor is the consumer of the fixtures. Either the sales tax applies to the sale of the fixtures to the contractor or use tax applies to the contractor’s use of the fixtures. 9/6/95.

190.1286 **Built-In Appliances.** When appliances, such as ranges, ovens, and microwave ovens are installed into compartments specifically designed to accommodate them

and are intended to remain in these spaces for the life of the appliances, they should be regarded as fixtures. Accordingly, tax applies to the purchase price of these appliances to the developer/contractor when homes are sold for a lump-sum price to its customers. This is especially true where the appliance is not functionally or aesthetically suitable for operation outside the predesigned space and would not in any normal situation be taken by the owner of the house upon moving. 11/6/87.

**190.1288 Built-In Beds.** The frame and box spring of a built-in bed constitute fixtures if they are firmly attached to realty. The mattress of a built-in bed is regarded as ordinary tangible personal property because it is similar to furniture or furnishings and is easily removed. 2/9/81.

**190.1298 Cabinet—Rewrapping or Reconditioning in Place.** The process consists of removing existing cabinet doors, drawers, and hardware, covering them with veneer and reinstalling them to the existing cabinets with new moldings and hardware. The cabinets are stained and finished by a subcontractor and, if new counters are needed, another subcontractor is utilized.

Lump-sum contracts to perform the reconditioning or “rewrap” constitute contracts for the improvement of realty. Tax applies when such a contractor buys the parts. If for some reason the contractor purchased the parts for resale, use tax should be paid by him based on the cost of the items. The subcontractors are consumers of the parts and materials which they utilize. Tax reimbursement should not be billed to the owner or person in possession of the realty. 4/26/83.

190.1300 **Cabinets,** built and installed on the premises of building and not “prefabricated,” are not regarded as fixtures, and contractor is consumer of materials used. 10/17/50.

**190.1305 Cabinets.** The following examples illustrate various lump-sum contractual situations with respect to cabinets and the application of sales tax in accord with Regulation 1521(c)(2).

I. Contractor “A” contracts with a property owner to furnish and install a cabinet with a formica-topped work area. Contractor “A” builds the cabinet so that it is a unit, except that the formica top is not attached before affixation of the cabinet to the realty by Contractor “A”. The formica top is installed after the rest of the cabinet has been affixed to realty. The direct costs of “A” on this job are:

*Fabrication    Installation*

	<u>Material</u>	<u>Labor</u>	<u>Labor</u>	<u>Total</u>
Cabinet .....	\$500	\$600	\$100	\$1,200
Top.....	200	50	80	330
<b>Total.....</b>	<b>\$700</b>	<b>\$650</b>	<b>\$180</b>	<b>\$1,530</b>

Calculation: (700 + 650)/\$1,530 = 88.2%

Since less than 90% of the direct cost of labor and material in fabricating and installing the cabinet is incurred prior to affixation to the realty, Contractor “A” is the consumer of materials on this job. No prefabricated cabinet is involved.

II. Contractor “A” contracts with a property owner to furnish and install a cabinet with a formica-topped work area. Contractor “A” builds the cabinet so that it is a unit, except that the formica top is not attached before affixation of the cabinet to the realty by “A”. He contracts with subcontractor “B” to furnish and install the formica top on the already affixed remainder of the cabinet. He bills “A” \$360 for the furnish and install job. In this situation, contractor “A’s” direct costs (the subcontractor’s billing for the top excluded) are:

*Fabrication    Installation*

	<u>Material</u>	<u>Labor</u>	<u>Labor</u>	<u>Total l</u>
Cabinet .....	\$500	\$600	\$100	\$1,200
<u>Total.....</u>	<u>\$700</u>	<u>\$650</u>	<u>\$180</u>	<u>\$1,530</u>

Calculation:  $(500 + 600)/1,200 = 91.7\%$

“A” is the retailer of a prefabricated fixture. “B” is the consumer of materials, since he installed the formica top on real property.

III. Contractor “A” contracts with a property owner to furnish and install a cabinet with a formica-topped work area. Contractor “A” enters into a contract with “B” whereby “B” will furnish and install the cabinet unit except for the formica top.

Contractor “A” enters into a contract with “C” whereby “C” will furnish the formica top and install it on the cabinet after “B” has affixed the rest of the cabinet to realty.

The direct costs of “A” on this job are not of any significance in this situation.

The direct costs of “B” are:

*Fabrication    Installation*

	<u>Material</u>	<u>Labor</u>	<u>Labor</u>	<u>Total l</u>
Cabinet .....	\$500	\$600	\$100	\$1,200
<u>Total.....</u>	<u>\$700</u>	<u>\$650</u>	<u>\$180</u>	<u>\$1,530</u>

Calculation:  $(500 + 600)/1,200 = 91.7\%$

In this case, “B” has furnished and installed a prefabricated fixture, since, at least 90% of his direct cost of labor and material in fabricating and installing the cabinet is incurred prior to affixation to realty. In this case, “C” is the consumer of materials since he installed the formica top on real property. 9/28/78.

**190.1307 Cabinets—Tax Reimbursement.** A sub-contractor who furnishes and installs pre-fabricated cabinets is the retailer of those fixtures and, if the contract allows, may charge sales tax reimbursement to the prime contractor who is his/her customer. The sub-contractor cannot avoid liability for the sales tax by taking a

resale certificate from the prime contractor because he/she is by definition the retailer of the cabinets and a resale certificate would be ineffective. In this transaction, the prime contractor is the consumer of the fixtures sold and installed by the sub-contractor. The prime should not add sales tax reimbursement to his/her billings, as this would result in the collection of excess tax reimbursement, as described in Regulation 1700(b)(1). 7/25/90.

[190.1310](#) **Materials—Cabinets and Counters—Laminated Plastic Tops.** Laminated plastic cabinet and counter tops furnished and installed by a specialty contractor after the cabinets or counters have been installed by other contractors are regarded as “materials.” 1/4/60.

[190.1316](#) **Cargo Container Cranes.** A cargo container crane which is 100 feet high, weighs approximately 1000 tons, is designed to handle 40 ton payloads, is operated electrically, and is installed on a short supporting rail on a pier is a fixture under Regulation 1521(a)(5).

Modifying a cargo container crane, after years of use, by lengthening its boom and/or its height to allow retrieval of the containers from taller and wider ships does not result in fabrication of a new item of tangible personal property. Rather, the modification is a process to refit the crane for the use for which it was originally produced. When a taxpayer enters into a lump sum contract to perform such modifications, the taxpayer is the consumer of the parts it uses and should pay sales tax reimbursement to its vendors. 3/24/94.

190.1318 **Carpet Strips.** Carpet is cut into strips and bound on one side for permanent installation in a manner similar to wall to wall carpeting base boards. The contract to install is a construction contract under Regulation 1521 (a)(2). If the cutting and binding is done by the installer, tax is due on the material cost. If the cutting and binding is done by someone other than the installer, the charge to the installer is for fabrication labor, which is subject to tax, in addition to the tax due on the cost of the carpeting itself. 12/21/92.

190.1320 **Cathodic Protection System.** Most items used in a cathodic protection system are “fixtures.” This includes the ground anodes and rectifiers. Wiring, conduit, poles, and backfill are “materials.” 9/16/54.

190.1330 **Catwalks, Ladders, and Stairs Attached to Wine Tanks.** Catwalks, ladders, and stairs attached to tanks classified as fixtures are part of the overall system and are fixtures also, rather than materials. The catwalks, stairs, and ladders are in the nature of accessories to the tank and they do not lose their identity as accessories when installed. 8/14/79.

190.1340 **Ceramics Kiln.** A large ceramics kiln which is wired directly into the electrical circuit of a building is a fixture under Regulation 1521. 9/20/67.

[190.1355](#) **“Clean Rooms.”** A modular “clean room” which is assembled and then attached to real property is a fixture. If, on the other hand, the “clean room” was assembled from the real property out (i.e., the first piece attached to real property and the next piece attached to the first, etc.), the room will be regarded as composed of materials except for any items of the type listed as fixtures in Regulation 1521. 8/9/89.

190.1360 **Clothesline poles** are “materials” and the purchase of pipe from which the poles are fabricated is subject to tax. Contractor who furnishes and installs a clothesline pole is performing a contract to improve real property and is the consumer of the “materials.” 7/21/54.

190.1380 **Community Antenna Television System.** A community antenna television system is considered “material.” Installing contractor is, therefore, the consumer and tax applies on sale of materials to contractor. 8/23/66.

190.1400 **Compressors, Condensing Units and Evaporative Condenser** are “fixtures”; “walk-in” boxes, tubing installed in conduits or laid in concrete, are “materials.” 3/16/51.

190.1410 **Construction of Truck Scales.** A contract to construct four 190 foot truck scales is a construction contract. The scale platforms are delivered in 20 sections and are installed in place. The load cell columns are bolted in place on concrete foundations. The platform sections are welded to the columns and the sections are welded together, after which reinforcing bars are installed and concrete is poured into the scale platforms. The load cell columns and the scale platform and concrete are materials consumed by the contractor. The consoles and mini computer controlling the consoles are fixtures. The cables interconnecting the scales, consoles, and computer are materials. 3/7/72.

190.1420 **Cooling Towers.** The manufacture and construction of cooling towers and large size water tanks, either on concrete foundations or upon specially built towers, which are affixed to realty, constitute the consumption of materials used at cost and the tax is based upon such cost price.

With regard to small tanks, size of the tanks alone is not determinative of whether they are to be considered “fixtures” or “materials.” If they are prefabricated, there being no labor of construction, erection, or assembly on the site of installation, the only labor performed there being the attaching of the tanks to realty by plumbing connections, bolts, etc., the tanks should be regarded as “fixtures.” 9/1/53.

190.1425 **Control Panels—Mail Sorting Systems.** Custom designed control panels for conveyor-type mail sorting systems are fixtures. 12/4/89.

190.1428 **Conveyor System Components and Fabrication Labor.** In addition to the information in Annotations 190.1430 and 435.0140, the following should be noted with respect to conveyor systems. Taxable fabrication labor in connection with the manufacture of the fixture portion of the system includes labor in the shop, labor at the jobsite which is performed before the item being worked on is permanently attached to: (a) a structure, (b) realty, (c) that which is itself attached to a structure or realty. Taxable labor would include fabricating, assembling, processing, and any other activity short of attaching as in a, b, and c above.

Among the items classified as parts of the fixtures are rollers, bearings, idlers, motors, pulleys and other components performing moving and transporting functions.

Items classified as materials are the components constituting the foundation and supporting structures, including gratings, catwalks, railings, vertical posts, overhead beams, and other members supporting the moving parts. 8/11/78.

**190.1430 Conveyor Systems are Fixtures.** A manufacturer designs and manufactures conveyor systems and installs them in the manufacturing plants, warehouses, and air terminals. Each installation is designed for a particular customer and a particular location. They are installed by first installing legs or other supports in the building. Conveyor units are then attached to the supports. Catwalks and platforms for workers may be attached to the supports.

The supports, catwalks and platforms are materials. The conveyor units are fixtures and the measure of tax is the cost price of the units including the charge for engineering and designing special conveyor units. The measure of tax does not include the charge for determining what units are required for the system or the arrangement of the units within the building. 3/21/77.

**190.1440 Darkening Curtains.** Darkening curtains or draperies installed in school classrooms for audio-visual purposes constitute fixtures. Such curtains are distinguishable from typical draperies installed in homes ordinarily considered personal property in several respects, including the following: The darkening curtains are fire resistant and could not be taken down and cleaned without ruining their fireproof character; they are customized to fit windows of various sizes and shapes and, therefore, are not moved from one room to another; the curtains are relatively high quality and expected to last many years; sometimes the tracks are recessed in the ceiling while other times they would be attached to the surface of the ceiling with screws; at times the curtains would be permanently sewed to the flanges extended from the rollers while at other times they would be attached to the rollers with hooks. 6/3/65.

**190.1450 Device to Raise and Lower Causeway.** A device used to raise and lower a portion of a causeway to allow ships to pass underneath is classified as a fixture and not machinery and equipment. 3/19/84.

**190.1455 Direct Cost.** A cabinet is considered prefabricated and, therefore, a fixture when 90 percent of the total direct cost of labor and materials used for fabricating and installing the cabinet is incurred before the cabinet is affixed to the real property. In calculating whether a cabinet is considered to be “prefabricated,” costs of labor such as workers compensation, medical coverage and income/payroll taxes are included in computing the direct cost of labor used in fabricating and installing the cabinets. 1/26/97. (M99-1).

**190.1460 Diving Boards.** Diving boards even though removable and replaceable, are fixtures. 3/2/65.

**190.1473 Dock Boards.** Dock boards are in the nature of ramps and perform a function essential to the building. They are an accessory to the building and do not lose their identity when placed or installed and thus are classified as fixtures under Regulation 1521(a)(5). When not in use, the dock boards actually become a part of the floor of the loading dock. The fact that the dock board is a “self contained unit,” can be removed from the site within one man hour, and the remaining hole

filled for less than \$25.00 does not compel a conclusion that the dock board is machinery and equipment rather than a fixture. 3/22/71.

**190.1480 Doors.** Remote control doors are “materials.” Door operating equipment, e.g., motors, etc., are “fixtures.” 3/30/54.

**190.1490 Electrical Service Panel—Related Training and Testing Charges.** A contractor will purchase a large service control panel which includes several float switches, cable, manual, and documentation that the unit has been assembled and tested in the shop. The unit will be delivered to the jobsite for installation by the contractor. The contractor will obtain a separate quote from either the seller of the control panel or a third party to test and adjust the control panel as well as to provide a training session to jobsite personnel on how to operate the unit.

Based on the facts presented, the control panel is a fixture under Regulation 1521(a)(5). Thus, the sale of the service panel from the contractor to its customer is a retail sale subject to tax as set forth in Regulation 1521(b)(2)(B)2. That is, tax applies on the contractor’s stated sales price of the panel to its customer or, if not stated, on the cost price of the panel to the contractor. This cost price includes the sale price of the panel to the contractor, the charge for any additional fabrication performed by another person, and the cost in accordance with the formula in Regulation 1521 for any fabrication the contractor performs prior to installation.

When the vendor or a third party provides testing, adjustments, and jobsite training on how to operate the panel sometime after the contractor has installed the panel at the jobsite, such work and training are not considered as jobsite fabrication. The charges for that testing and training are not part of the contractor’s taxable gross receipts from the sale of the panel. 6/26/95.

**190.1494 Electrical Transmission and Distribution Control Systems.** These systems electronically control the transmission of oil, water, or steam. They are constructed from raw materials, i.e., sheet metal, wire, wire gutters, control system controllers, motor starters, solenoid valves, pneumatic controllers, level switches, push buttons and temperature pressure, flow and level transmitters. They are constructed at the plant and then transported to the jobsite for installation.

These systems are not lines, poles, towers, or conduit and, therefore, do not come within section 6016.5. The systems will not lose their identity to become an integral and inseparable part of real property and, thus, are not “materials.” Rather, the control systems will be accessory to the buildings and will not lose their identity when installed. Therefore, they should be regarded as fixtures. 7/14/93.

**190.1500 Electronic Control Panels for Conveyor System.** An electronic control panel, specifically engineered and custom designed to control a conveyor type mail sorting system in a U.S. Post Office, is classified as a fixture for sales and use tax purposes. 12/4/89.

**190.1511 Elevator Cab Decoration.** A taxpayer is a subcontractor engaged in finishing elevator cab interiors installed by others. This work includes the furnishing and installing of wall panels, handrails, and similar items. The work is done after the

elevator cab has been installed. The taxpayer is regarded as a construction contractor. The property which the taxpayer furnishes and installs constitutes construction “materials” because the installed parts are normally considered “materials” at the time of their installation regardless of the fact that the property is attached to a fixture.

When an elevator contractor agrees to furnish and install a cab, the entire cab is an identifiable unit which does not lose its identity when installed and the entire unit is taxable as a “fixture” even though some of the parts would normally be considered “materials.” However, when parts which normally are considered “materials” are installed by a subcontractor on a cab previously installed on realty, the parts are taxable as “materials” to the subcontractor because they lose their identity and become inseparable parts of the realty. 8/5/94.

**190.1515 Elevator Cab and Hydraulic Cylinder Hoist.** The construction and installation of an elevator cab attached to a hydraulic cylinder embedded in the ground is considered a fixture under Regulation 1521(c)(7). The hydraulic cylinder hoist which lifts the elevator is “hoisting machinery” pursuant to Regulation 1521(c)(7) and is also classified as a fixture. 10/29/86.

**190.1520 Elevator Control Boxes.** The control boxes are placed or installed in an isolated equipment room, and not embodied in the elevator unit. Isolating component operating features of a fixture cannot change their status as fixtures, unless the isolated features are so embodied in the structure that they lose their identity. 10/20/64.

**190.1540 Escalator Installation.** The moving parts of an escalator including the stair case, moving hand rails, chains, sprockets, and other operating mechanisms, are fixtures. The assembling of a series of escalator steps together prior to the time they are installed in place is fabrication rather than installation labor. 4/26/65.

**190.1560 Fabricated Formica—Incorporation into Fixture.** Fabricated formica is “material.” However, as part of a “prefabricated” cabinet, it would be part of a “fixture.” 9/18/64.

**190.1580 Fencing, Carpeting, Metal Windows and Doors.** These items constitute “materials” when used to perform a construction contract. 4/20/50.

**190.1590 Fireplace Mantels.** A contractor is in the business of fabricating and installing fireplace mantels. The contractor manufactures two basic varieties: wood and simulated stone or concrete. A mantel usually includes the mantel, the lintel, the legs supporting the mantel, and the hearth. They are fabricated in “manageable pieces” (about four pieces for wood mantels, and seven pieces for concrete mantels) in the shop and then installed at the job site to complete the mantel. The installation cost to the contractor is about 60 percent of the total direct cost of fabricating (including materials and expenses) and installing a mantel.

Traditionally, fireplaces and mantels in buildings have been or have had the appearance of being an integral, inseparable part of the real property. In addition, extensive installation is required by affixation by glue and/or staples, or mortar, and/or leg bolts to the wall and floor. Therefore, under these stated facts, the contractor is furnishing and installing “materials” within the meaning of

Regulation 1521. Thus, sales or use tax applies to the sale or use by the contractor of the materials and supplies which it consumes in furnishing the mantel pieces and installing them. 3/17/95.

190.1591 **Fireplace Package.** A fireplace package consists of a firebox in which the combustion takes place, plus other components needed to complete the installation, such as wall pipe, chimney pieces, fire stops, elbows and flue supports. This is a package of materials, and is taxable when sold to a construction contractor who will install the components. These items do not constitute a fixture. 4/13/92.

[190.1595](#) **Framework for Freeway Sign.** A taxpayer manufactures a framework to which he attaches a freeway sign supplied by others. The taxpayer then connects the unit, framework and sign, to a freeway bridge by means of anchor bolts already emplaced on the bridge. The metal sign totally covers the framework.

The framework is classified as a fixture rather than materials under Regulation 1521. The framework is not an integral part of the bridge or structure upon attachment. Its function is to support a sign rather than become a structural part of the bridge, its location is upon a structure rather than upon the land itself, it was constructed as a unit and attached as a unit, and upon attachment it did not lose its identity to become an integral and inseparable part of the real property. 1/20/78.

[190.1620](#) **Garbage Disposal Unit.** Electrically operated garbage disposal units are regarded as “fixtures” and the tax applies to the retail selling price. If an additional charge is made for installation and is separately stated it would be excludible from tax base. 1/12/53.

190.1627 **Gas Ranges—Sales By Builder of Apartment House.** Free standing gas ranges/ovens may be sold for resale to the builder of an apartment house who will resell the ranges and the apartment house upon completion. It is immaterial that the seller of the ranges may install them in the appropriate place within each apartment. The builder should issue a proper resale certificate in a timely manner, as prescribed in Regulation 1668. In the absence of a proper certificate, the sale would be presumed to be a retail sale pursuant to section 6091 of the Sales and Use Tax Law, unless other evidence is submitted to show that the item was resold. “Built-in” ranges and ovens, on the other hand, are either fixtures or materials and their sale and installation are governed by Regulation 1521. The regulation provides that the contractor who furnishes and installs such items is the consumer of materials and the retailer of fixtures. The installing contractor does not make a sale for resale and may not accept a resale certificate for such items. 8/23/60.

190.1660 **Gutters, Downspouts, Drain Pipes,** regarded as “materials.” 7/31/51.

190.1670 **Helium Compressor.** Components of a helium compressor system mounted on structural steel skids or platforms for permanent installation on a foundation cannot be individually considered as machinery and equipment because the system as a whole is a “fixed work” as defined in Regulation 1521(a)(1)(A)2. This conclusion is supported by the U.S. government’s specifications stating that the system is a permanent installation and there is no intent to remove any part of it at a later date. 3/16/84; 7/10/96.

190.1680 **Highway Lighting Facilities.** Traffic signals are “fixtures” and the installer is the retailer. The wires, conduits, and poles are “materials.” 7/28/53.

190.1690 **Hoppers.** Hoppers used to hold abrasive materials for a sand blasting facility are fixtures, not machinery or equipment when they are physically attached to the realty and were expressly made for use in conjunction with the fixed works. Without them, the sand blast facility could not be used for its intended purpose. 5/31/94.

190.1700 **Ice Used in Concrete Construction.** Ice, purchased by a construction contractor for mixing with cement, aggregates and water to make concrete, serves to dissipate heat, preventing the concrete from setting too rapidly and from shrinking. Inasmuch as the ice is a source of water and, as such, becomes a component of the concrete, it constitutes “materials.” 11/6/67; 11/29/82.

190.1720 **Incinerators.** Portable type incinerators which are sectional and are assembled on the purchaser’s property, are classified as “fixtures” for sales tax purposes. 6/12/56.

190.1740 **Incinerators.** Small incinerators that are not constructed at least in part on the job and are wholly prefabricated should be considered “fixtures.” When installed by the manufacturer, the measure of the tax should be so-called “fabricated cost.” 4/30/53.

190.1760 **Incinerators.** Extensive outdoor structures built on a brick or concrete base, with the brick work done at the erection site, are materials. 12/3/52.

190.1780 **Industrial Ovens and Dryers.** Industrial ovens and dryers in the main, are materials constituting structures or improvements to realty. 12/14/56.

190.1785 **Interior Wall Panels.** A company manufactures and sells prefabricated wall panels that are placed into floor and ceiling channels, screwed into place and finished with trim pieces. The customer can take down the walls and reconfigure their placement as needed. Whether the walls ever *are* reconfigured or not, they *can* be, and that is a part of their advertised attraction and a consideration in their purchase. Such “modular wall systems” and “relocatable walls” are noticeably different and less permanent in appearance than traditional walls. These types of wall systems are classified as tangible personal property because they are not permanently affixed to the realty, they may be used in almost *any* building without requiring any special adaptation, and they generally are intended to be movable and re-configurable. 04/26/01.

190.1790 **Interior Wooden Window Shutter.** A taxpayer is in the business of furnishing and installing interior wooden window shutters for customers’ homes. The contractor purchases and sells completed and finished shutters and bills customers lump sum. Since shutters of this type are fixtures, the contractor is the retailer of the fixtures it furnishes and installs. Sales tax applies to those retail sales. If the contract with the customer does not state the sales price of the fixtures (lump sum billing) and the contractor purchases shutters in a completed condition, the sale price is the cost price of the shutters to the contractor.

The contractor is required to hold a seller’s permit since it is a seller of fixtures. 9/29/94.

190.1820 **Jalousies.** Stationary jalousies, whether vertical or horizontal, fall under the classification of “materials.” 8/31/55.

190.1840 **Jetway Units.** Jetway units are in operation a part of, or an extension of, a structure, and constitute corridors for passenger use similar to hallways in a building; they are “materials” notwithstanding the fact that they are movable and have a telescopic action, since they are permanently attached at one end to the building. 6/7/61.

190.1860 **Koolshade Screens.** Koolshade screens are of a nature that they become so architecturally and functionally integrated with the building to which they are attached that they may be considered “materials” rather than “fixtures.” The function of Koolshade screens is to minimize direct solar radiation into the interior of buildings. The screens may be set up as part of a window closure or may be offset from the building by outriggers or other means. Window screens are classified as “materials.” 5/26/64.

190.1873 **Laundry Facility.** The following is a classification of items installed in a laundry facility in an institution:

Machinery and Equipment. The following items are machinery and equipment pursuant to Regulation 1521(a)(6) since they are used in the processing of tangible personal property (laundry). The classification is not influenced by the fact these items are affixed to realty, since these items are not essential to a building and the items may be removed without damage to the building:

Washer extractors

Tumble dryers

Cart washer

Roller ironer

Astro

Tunnel-Matic (removes wrinkles from laundry)

Fixtures. The following items are fixtures pursuant to Regulation 1521(a)(5):

(1) Lint Filters/Fire Control and Mixed Air Reuse System. This unit is physically maintained on the roof of the building and connected to the dryers by ducts. The lint filters are connected to the building water supply and the compressed air system by galvanized pipe. Dust control systems and fire alarm systems have previously been determined to be improvements to realty. (Annotations 565.0265 and 565.0280, respectively).

(2) Waste Water Heat Recovery Water Pumping/Storage. This unit, through a heat exchanger, utilizes the heat in the waste from the washers to pre-heat the input water to the washers. The waste water is then discharged into the building sewer system. This item is a water heater. (Annotation 565.0290.)

(3) Flow Rock Storage System. This is a metal storage shelf which is 6.5 feet wide, 7 feet high, and 20 feet long. It is securely fastened to the concrete floor by bolts at each of the eight vertical members. The roller racks are an integral part of the unit and angled to provide gravity flow from rear to front. These racks are

similar to shelves, are attached to the realty, and are accessories to the building which do not lose their separate identity as accessories. These racks are used to merely store the laundry and, therefore, they are not essential to the processing of the laundry. Therefore, the racks are not machinery and equipment.

Mixed Items. Items are part materials and part fixtures pursuant to Regulation 1521.

(1) Five Module Central Liquid Supply System. This unit is installed in a room along with all of the other plumbing related fixtures. Each module is connected to each washer via a plumbing manifold system. In addition, the system is connected to the building water supply and to compressed air systems by galvanized pipe. These items are either materials (piping valves and pipe fittings) or fixtures (plumbing fixtures). (2) Flow Meters. Flow meters monitor steam and water flow through the laundry facility and can be removed and replaced without damage to the laundry facility or the building. These items are similar to pipes valves, tubing, and junction boxes incorporated into the building and connected to the buildings water supply and are generally considered to be materials (piping valves and pipe fittings) or fixtures (plumbing fixtures). 4/5/88.

[190.1880](#) **Leaded Glass Church Windows** are not “fixtures” but are constructed by consuming “materials” in improving realty. Same as to hospital windows. 2/21/52.

[190.1883](#) **Leases of Communication Equipment.** A retailer of communication equipment purchases and installs communication equipment. This equipment consists of a central exchange, touch dial communicators, and head sets. The retailer installs a communication system in an existing building. The customer, who is not the owner of the building, will lease the equipment. The leasing company is billed lump sum by the communication equipment retailer with a parenthetical notation that sales tax, delivery, and installation are included.

Communication equipment constitutes improvement to realty with the components of the affixed system classified as fixtures under Regulation 1521(a)(5). The above transaction is a lump-sum construction contract for the furnishing and installation of a communications system. Where the contractor “sells” the fixtures to the leasing company (which is not also the lessor of the realty), if the contractor has properly reported the tax on the fixtures in accordance with Regulation 1521(b)(2)(B), the property will be regarded as tax paid in the hands of the lessor. Accordingly, the rental receipts from the lease will not be subject to tax. If the contractor has not properly reported the tax, liability for any additional tax will be that of the contractor.

The lessor may give the contractor a resale certificate for the property to be leased and elect to pay tax on his rental receipts, in which case the contractor would be permitted to regard his “sale” of the fixtures as a nontaxable sale for resale. 3/31/71.

(Note: Change in certain telephone equipment classification on and after July 1, 1988, Regulation 1521(c)(8).)

[190.1885](#) **Lump-Sum Price-Fixture Repair.** When a heating and air conditioning contractor enters into a lump-sum (flat price) contract to repair a fixture, either in place or one which is reattached to the realty, the contractor is the consumer of the parts used. As a consumer, the sale of the parts to the contractor, or the use of the parts by the contractor, is subject to tax. (Regulation 1521(c)(6).) 11/18/94.

[190.1900](#) **Mail Chutes** regarded as “fixtures.” 9/4/51.

[190.1920](#) **Metal Folding Gates.** Metal folding gates are “materials” pursuant to Regulation 1521. 4/13/71.

[190.1924](#) **Mezzanine Storage Systems.** A mezzanine storage system consists of multiple metal shelves, posts, racks, decking, as well as stairs and can be substantial in size. The storage unit is shipped unassembled from the manufacturer and the contractor assembles and installs the unit at the jobsite. The majority of labor consists of assembly. Installation of the mezzanine consists of bolting the unit’s support parts to the floor. Optional features include windows, floor tiles, doors, and extra shelving. The furnishing and installing of a mezzanine storage system constitutes improvement to realty. 1/25/90.

[190.1940](#) **Mirrors, Furnishing and Installation of.** A mirror which merely hangs on a wall by wires attached to nails would not be regarded as becoming part of the realty, but where a mirrored wall is installed or where “glass” becomes an integral and inseparable part of the completed structure the “glass” or mirrored wall is regarded as “materials.” Mirrors may also be “fixtures”, as in the case of frame mirrors securely affixed to the building by screws which have not lost their identity as accessories when placed or installed. If the mirrors involved are “fixtures” the last retail sale would be made by the subcontractor to the contractor. 11/28/52.

[190.1960](#) **Mosaic Tile Murals.** Prefabricated mosaic tile paintings attached to walls or other parts of a building as a completed unit by bolts are “fixtures.” 5/17/67.

[190.1978](#) **Movable and Demountable Wall Panels.** Demountable wall panels held in place solely by internally generated pressure without permanently affixed splines are tangible personal property rather than fixtures or materials. 8/27/74.

[190.1985](#) **Magic Aisles as Fixtures or Materials.** Magic Aisles, which are filing and storage facilities of a proprietary design that move on special tracking installed in new additional flooring resting on, and screwed to, the complete floor of an existing building, are usually installed in specialized buildings. The attachment of the new added flooring and tracking constitutes the installation of materials, and the attachment of the storage units in the tracking constitutes the installation of fixtures. 5/12/76.

[190.2020](#) **Nurserymen.** Nurserymen are contractors selling “fixtures” when they contract to dig, transport and plant ornamental trees they have bought for that purpose. However, in the installation of a lawn, nurserymen are consumers of the materials used. 1/18/65.

[190.2032](#) **Parking Gates and Door Locks.** Parking gates and door locks are fixtures and are to be treated as tangible personal property when leased with the right of removal by the lessor when the lessor is not also the lessor of the realty to which

the items are affixed. Accordingly, tax is due on the lease receipts when the items are not acquired tax paid and leased in substantially the same form as acquired. 9/16/77.

**190.2040 Pipe.** Orchard sprinkler systems, which consist of below-ground pipe and above-ground flexible hoses equipped with sprinklers which are attached to the below-ground risers by couplings, gluing or welding, and which are intended to remain in the orchard until it is necessary to remove any part for repair, replacement or obsolescence, are “materials” and the contractor is the consumer thereof. 5/9/69.

**190.2050 Plug-In Handset Intercom Units.** Plug-in handset intercom units are not “fixtures” under Regulation 1521 since they are not “accessory to a building” within the meaning of that concept as it is used in paragraph (a)(5). They remain tangible personal property. When the units are hard wired into a system, they would be regarded as “fixtures.” 2/26/75.

**190.2060 Pneumatic Conveying Systems.** Pneumatic conveying systems installed by a contractor are considered “materials.” Motors, fans and ducting used directly with the motors and fans are regarded as “fixtures.” 2/19/53.

**190.2070 Portable Air Conditioners.** During the construction of an apartment house, the contractor provides an opening in the wall of each unit for the insertion of a portable air conditioner. The opening is fitted with a metal sleeve, and walls are then finished. The air conditioners are later inserted in the sleeve and plugged into an electrical outlet. The air conditioners are fixtures when installed and are realty when the structure is either leased or sold. 4/17/72; 7/10/96.

**190.2075 Power Line Filters and Parts.** Power line filters and parts used as a grounding system for a power line system to prevent computer data from leaking back over electrical transmission lines are “fixtures” and not “machinery and equipment.” A United States contractor is the consumer of these items when contracting with the United States to furnish and install them pursuant to a construction contract. 2/26/90.

**190.2078 Prefabricated Fireplaces and Accessories.** A fireplace package consists of a firebox which is the chamber within which the actual burning takes place, plus an assortment of other components required to complete the installation, e.g., wall pipe, chimney pieces, fire stops, elbows, and flue supports. The complete installation also requires a framing into which the firebox and chimney must be set, with due regard for air spaces, fire stops, etc., required to satisfy building codes and prevent fires. There are also precut marble facings and hearth extensions which may be part of the complete installation to give the entire job the look of a traditional fireplace, i.e., built-in as part of original construction with little prefabrication.

There is extensive installation labor required for these fireplace packages, particularly when considering the carpentry-like framing required, and the chimney work, all of which must be up to fire codes. These fireplace packages are classified as materials. 5/25/91.

**190.2080 Preheaters.** Preheaters are substantial pieces of equipment installed in air intake passages of large industrial boilers in steam plants. The units heat air utilized by the boiler, causing more efficient fuel combustion and greater heat production. The air preheater itself constitutes materials and the drive mechanism constitutes “fixtures.” 7/8/65.

**190.2100 Pumping Equipment.** Installation of pumping equipment for a lumpsum price is regarded as the sale of a fixture. If, however, it is installed in such a manner as to remain personal property, it is not a fixture and tax applies to selling price but not to installation charges separately stated. 5/13/54.

**190.2102 Redwood Water Tanks.** The construction of redwood water tanks over 500 barrels capacity at the jobsite is a construction contract for the installation of “materials.”

If the contract is for furnishing a water tank under 500 barrel capacity and the tank is not attached to realty other than by its own weight upon mudsills, concrete piers, slabs, etc., it is not a construction contract and tax applies to sales price.

If the contract requires the installation of less than 500 barrels capacity tank to make the plumbing hook up, it is a construction contract and the tank is a fixture. 2/22/72; 7/10/96.

**190.2105 Remodeling.** A taxpayer contracts to reface existing installed kitchen cabinets. This consists of removing the cabinet doors and either replacing them, restaining them or revenering them. The taxpayer is the consumer of all property used to perform the contract. The property is regarded as “materials” and no tax applies to the labor charges.

If the taxpayer contracts to remove old kitchen cabinets and to install new kitchen cabinets, the application of tax will depend upon the degree to which the new cabinets are prefabricated. Subdivision (C)(2) of Regulation 1521 describes the application of tax to cabinets.

The taxpayer contracts to remove old windows and to replace them. Windows and window frames are “materials.” The taxpayer is the consumer. Tax applies to the cost of the windows to the taxpayer, but not to labor charges. If the manufacturer of the windows also installs them, the manufacturer is the consumer of the materials used to fabricate the windows and tax will apply to the manufacturer’s material cost, but not to any labor costs.

The taxpayer contracts to cut a used nine-foot table into three-foot sections and to install hardware. If the end result is three small tables, the entire charge will be taxable on the basis that the labor involved is fabrication labor. If the end result is a single table the job is regarded as a repair job and tax applies in accordance with Regulation 1546. 8/29/94.

**190.2107 Removable Pool Fencing.** A company contracts to install protective pool fencing and posts which is advertised to be removable in minutes. The materials consist of prefabricated plastic covered fencing in sections up to 12’ long which attach to posts which are inserted into sleeves which are either aluminum into which the posts slip, or vinyl into which the posts twist and lock. The sleeves are permanently fitted into holes which must be drilled in the decking around the

pool. In some instances, additional support must be installed under the decking and in other cases, cement curb must be installed. The taxpayer bills lump sum with no mention of sales tax.

If the contract is a construction contract, the contractor is the consumer of the tangible personal property furnished and installed, but if it is a contract for the sale and installation of tangible personal property, the contractor is the retailer of that property. To be a construction contract, it must be a contract to make an improvement on or to real property, affixed to the land in the manner set forth in Civil Code section 660, which in part says that a thing is affixed to land when it is . . . imbedded in it, such as walls; permanently resting on it, such as buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts or screws.

Using these criteria, the permanently affixed elements of the fencing contract are the sleeves, the under-deck support lumber, and the cement curbing. The posts and fencing and any latching devices are by design removable, and are therefore not permanently attached. The taxpayer is the retailer of these items and the consumer of the materials included in the permanently attached items. Labor to drill post holes and install the posts and fencing is not subject to tax. 8/23/94.

190.2111 **Safety Railings on Staircase/Walkway.** Safety metal hand railings installed in a light rail station and embedded in cement are “materials” rather than “fixtures.” Therefore, the contractor, who furnishes and installs the rails, is the consumer of the rails and sales tax applies to charges by the vendor for fabricating the rails for the contractor. 6/7/95.

190.2112 **Satellite Dishes.** A taxpayer is engaged in the sale and installation of satellite dishes for television reception. The taxpayer made sales to two general stores located in remote areas. The dishes were affixed by the taxpayer to foundations designed to hold them in place. The dishes were sold for resale as an inventory item of the purchasers (general stores).

Annexation of personal property to realty is not the sole criterion for purposes of determining what constitutes a fixture. The following lists may be used to ascertain whether an article is a fixture in a given case: (1) the manner of its annexation to realty; (2) its adaptability to the use and purpose for which the realty is used; and (3) the intention of the party making the annexation. (*Standard Oil Co. v. State Board of Equalization*, 232 Cal.App.2d 91 (1965).) Of these three factors, the intention of the parties is generally the controlling criterion in ascertaining whether property is a fixture or remains personal property. (*Camp v. Matich*, 87 Cal.App.2d 660 (1948).)

It must be borne in mind that both purchasers are general merchandise outlets located in remote and sparsely populated areas and they are the only such retail location in their respective areas. It is understandable that such establishments would have an inventory of only one satellite dish and that it would be properly displayed. Both of the dishes were ultimately resold. Finally, the manner of affixing the dishes to the foundation was such that they could quickly and easily be removed. Accordingly, the two sales constituted exempt sales for resale. 4/22/88.

**190.2115 Scoreboards.** Scoreboards and timers manufactured prior to installation and affixed by the manufacturer-contractor to a stadium are “fixtures.” Where title to the fixtures passes to the owner of the stadium in consideration of the right of the manufacturer-contractor to lease advertising space on them the measure of tax is the same as in the case of a sale of fixtures under a lump-sum construction contract. 11/20/67.

**190.2120 Sculptured Splash Deflectors.** Bronze sculptures which comprise center splash deflectors in large decorative concrete fountains, designed and installed as integral components of realty, constitute materials. 8/31/65.

**190.2130 Security Systems.** The sale and installation of a security system utilizing electronic sensors, digital computer, and master control panel with integrated wiring for detection of forced entry, fire, smoke, etc., constitutes a construction contract. 2/22/71.

**190.2160 Shower Stall Units.** Prefabricated fiber glass shower stall units which include walls and floors are fixtures. 11/30/67.

**190.2180 Shutters.** The function of an item is frequently important in determining its status as “materials” or “fixtures”, as well as its method of attachment. Movable shutters, which serve no function other than venetian blinds or shades, (i.e., rather than as doors, windows, or partitions) and are no more an integral part of the building than a venetian blind or shade, are considered fixtures. 4/26/55.

**190.2189 Signs.** Large outdoor advertising signs erected upon land are structures and the contractor is the consumer of the materials used. Signs attached to buildings are fixtures because they become real property when affixed. For pole signs, the pole is a material and the sign is a fixture if it is prefabricated. If it is not prefabricated it is materials. For example, channel letter signs are not prefabricated. Each letter is fabricated as it is being installed. Accordingly, the labor involved is exempt installation labor. 11/18/83.

**190.2190 Signs.**

(1) Pole Signs. Pole signs are free standing signs. The pole portion which is embedded in the ground is a structure and consists of materials. The prefabricated sign on top of the pole, which is affixed (installed) after the pole is constructed, is a fixture that is attached in such a way that it is not readily removable but which can be removed and replaced with another prefabricated sign containing a different message without dismantling or damaging the pole itself.

(2) Monument signs. A monument sign is a free standing sign and is a structure in and of itself, except for the panel prefabricated and installed. The panel contains what is to be displayed. The entire sign, with the exception of the panel sign portion, is constructed in place. The only portion of the monument sign that is a fixture is the prefabricated panel sign containing what is to be displayed. This panel could be removed and replaced with another panel containing a different message without dismantling or damaging the rest of the monument structure.

(3) Channel-Letter Signs. Channel-letter signs consist of individual letters (generally illuminated individually) which are permanently affixed to the wall of a building. In a channel-letter sign, the transformer component is a fixture; all else

are materials. Generally, channel-letter signs are not totally prefabricated letters and require more than a simple installation or attachment to the wall. Each letter is fabricated as it is being installed. In other words, a sign fixture is fabricated “in place” and, as it is fabricated, it is simultaneously installed so the end result is an improvement to the building (realty) to which it is attached.

There is no prefabricated sign (fixture) delivered to the jobsite in channel-letter sign installations. The completed illuminated sign itself is made up of components such as plywood, metal, plastic, channel letters, neon tubes, transformers, housing, conduit and wiring. In a channel-letter sign, the completed sign is the fixture, not the backing, transformers, plastic letters, etc., before installation.

(4) Letter Signs Attached to a Building. Letter signs attached to a building that are prefabricated (i.e., the letter is complete in itself like a bronze casting, and all that needs to be done is to affix it to the building) are fixtures. Each individual letter is a fixture. The fact that no word may be spelled by it does not make it a material since it is in a fully fabricated form prior to installation. 2/26/85.

**190.2192 Signs Designed to Control Traffic.** A taxpayer furnishes and installs signs which provide parking garage directions such as “Do Not Enter,” “Keep Right,” or “No Parking.” Some signs are outside a building and are mounted on posts or concrete bases. Other signs are attached to the outside or inside of the building. Unless these signs are large outdoor signs erected upon land so as to be classified as a structure, all these signs are classified as fixtures. These signs do not lose their identity when installed and should not be classified as materials. 9/11/91.

**190.2193 Signs, Directories, Consoles, and Dimensional Letters.** A taxpayer is a licensed construction contractor who manufactures and installs interior and exterior sign products pursuant to lump-sum contracts. The various categories of signs installed and tax applications follow:

(1) Traffic control signs: These signs consist of signs outside and inside a building that provide parking directions such as “Do Not Enter,” “Keep Right,” or “No Parking.” The signs are attached to buildings or are mounted on posts. These signs are classified as “fixtures” since they do not lose their identity when installed.

(2) Directories, custom metal consoles and dimensional letters: These signs are mostly built at the taxpayer’s plant and then attached to the real property in such a manner so as to become accessory to the building and, thus, “fixtures.”

(3) Signs which are not attached to the building but stand alone. The sign will be classified as “materials” if the sign is built on a cement pad piece by piece on the job site. If the sign is manufactured at the taxpayer’s plant and then taken to the jobsite and placed on the cement foundation and secured by bolts, the sign is a fixture.

(4) Directories or signs which are recessed and flush with wall surface and facade striping which is consistent with exterior wall: The analysis applied to the other three groups of signs also apply to this group. If the signs are constructed at the taxpayer’s plant and are identifiable as signs when they are delivered to the jobsite for installation, the signs are fixtures. This is true even if there is some

assemblage done on the site such as placing prefabricated letters in order when bolting them to a wall or placing a console which is delivered in five large parts in the proper configuration. Facade striping may, however, be classified as materials if the construction is done on the jobsite. If the signs are completed before delivery to the jobsite and merely created in the color of the striping and set in the concrete to create the image of a continuous striping, the sign will remain a fixture. 9/11/91.

**190.2197 Signs—Directory, Custom Metal Consoles, and Dimensional Letters.**

Although the directories are built into a wall, mounted on a pedestal, or contained in a display area on a counter, all the directories retain their identity as an accessory when installed. They do not lose their identity and become an inseparable part of the real property. The company claims that the architectural integration of the directories should affect the findings. While it is acknowledged that the company's effort in making the directories aesthetically pleasing and in conformity with the architecture of the building may make the products of higher quality, the fact remains that the directories are not built piece by piece on the site. They are built at the company's plant and then attached in some manner to the real property so as to become an accessory to the building and, therefore, must be classified as fixtures.

The consoles are also built at the plant and then brought to the construction site in large pieces. Console type installations are considered materials consumed by the company if the consoles are affixed to the floor and assembled at the jobsite into the desired configuration.

Dimensional letters are considered fixtures because they are manufactured off the jobsite and do not lose their identity when installed. The on-site construction of a sign may be crucial to the classification of the sign. The amount of labor involved to affix letters that have already been manufactured off site does not change the classification from that of fixture. 9/11/91.

**190.2200 Sinks and Counter Tops.** Stainless steel sinks fastened to wooden casework are fixtures. Counter tops are materials. 12/4/61.

**190.2210 Sod Installed by Producer.** A sod producer is the consumer of the material (seed and other material used to produce the sod) which it furnishes and installs under lump-sum contracts. The producer would be a retailer of the sod when the contract provides for the transfer of title to the sod prior to the installation of the sod and the sale price of the sod, exclusive of installation, is separately stated. 7/24/91.

**190.2215 Spray Booths, Drying Ovens, Conveyors.** The installing contractor is the consumer of the steel, sheetmetal, ducts, insulation, piping, housings, and other materials becoming a part of various spray booths and bake ovens created in an auto manufacturing plant. A contractor erecting a conveyor system in the manufacturing plant is the consumer of the steel frame work running throughout the plant, the rails, framework and other materials forming the support of the bridge crane.

The conveyor contractor is the retailer of chains, hooks and wheels forming the moving parts of the system and the bridge and hoist forming the moving parts of the crane. In a lump-sum contract, the contractor may report as the measure of tax the purchase cost of these items which he purchases from other manufacturers as a completed fixture. 8/19/54.

190.2220 **Steel Reinforcing Bars**, used for purpose of reinforcing concrete constitute “materials.” 6/25/51.

190.2225 **Storage System (Moveable) and Stationary Shelving**. A contractor furnishes and installs moveable storage systems and stationary shelving for a lump-sum price. The items are purchased from an out-of-state manufacturer, are shipped disassembled, and must be assembled on site before they can be installed. The moveable storage system is mounted on rails which are permanently attached to the floor. The installation of the stationary shelving includes seismic bracing which is attached to the concrete by bolts and fastened to the wall.

Whether the storage system or stationary shelving is “materials” or “fixtures” depends on whether the test set forth in Regulation 1521(c)(2) is met. The act of attaching a piece of the cabinet is “jobsite fabrication” (i.e., part of the cost prior to installation onto real property) unless that piece becomes an improvement to real property by virtue of that attachment. Whether the rails are part of the cabinet and thus included in the calculation set forth in Regulation 1521(c)(2) depends on the facts. If the rails are used only on moveable systems, the rails are not regarded as part of the fixture for purposes of the calculation. The rails are “materials.” If the rails also are part of a stationary system, it is possible that they are part of the cabinet. This would be dependent on the actual facts.

In summary, the calculation of whether a cabinet is a fixture is performed on an individual basis. Thus, one cabinet installed under one contract may be a “fixture” while a substantially similar cabinet furnished and installed under the same contract may constitute “materials.” The cost of furnishing and installing materials which do not become part of the cabinet is not part of the calculation as to that cabinet. All labor is part of pre-installation labor except for that labor to physically attach property to cause it to become an improvement to real property by virtue of that attachment, and labor performed on property already an improvement to real property. 2/8/95; 8/2/95.

190.2230 **Swimming Pool Cleaning Units**. Swimming pool cleaning units consisting of a floating head, sweep hoses and feeder hose designed for and intended to remain connected at poolside to, and as an integral part of, a total pool cleaning system consisting of pump, motor, electrical wiring, switches and water piping constitute fixtures under Regulation 1521. 2/9/77.

190.2235 **Telephone Equipment**. Telephone handsets and modular switching equipment are regarded as machinery and equipment. Standardized, off-the-shelf, general purpose switching equipment is also regarded as machinery and equipment, unless the removal of that switching equipment would cause damage to the equipment itself or the building in which it is installed. For example, standardized, off-the-shelf, general purpose equipment which is not free standing equipment simply hardwired into the building, but is open, unprotected equipment

that is physically attached to the building, that if removed would create a hole over four feet square will be regarded as a fixture. 5/30/91.

**190.2236 Telephones Equipment.** Detachable telephone handsets and modular switching equipment are properly classified as machinery and equipment under the terms of Regulation 1521 (c)(8) even though their use is limited to a single overall communication system provided by the retailer.

For purposes of Regulation 1521, general purpose telephone switching equipment is considered “standardized” unless it is custom made and so unique in design that its use is limited to a single application at a single location in the system. 5/7/91.

**190.2240 Television Antennas** regarded as “fixtures.” 2/21/51.

**190.2280 Trees.** A tree is a “fixture”. 12/2/66.

**190.2290 Truck Scale Installation.** A contract to furnish and install a truck scale is a construction contract for the installation of materials and fixtures. The scale base and the foundation are materials. The scale components such as beams, levelers, etc., are fixtures. The registering devices, dials are fixtures. The cover plates for the pit and component parts thereof are materials. The labor of installing and concurrently assembling the parts is exempt as installation labor. In a lump-sum contract, the measure of tax would be the purchase cost of the materials and component parts of the fixture(s). 3/19/79; 7/10/96.

**190.2300 Turbines, Pump-turbines and Kaplan Turbines, and Governors.** These items are “fixtures.” 4/7/66.

**190.2315 Uninterruptible Power System—United States Contract.** A uninterruptible power system (UPS) which provides continuous electrical power to critical equipment and machinery at United States government facility are fixtures within the meaning of Regulation 1521. The UPS do not lose their identity as accessories to the building whether or not the United States government is responsible for installation of the embedded conduit and wiring. The UPS are also essential to the fixed works since they provide continuous electrical power to critical machinery and equipment. (See e.g., *Overhead Electric Co. vs. State Board of Equalization* (1991) 227 Cal.App.3d 1230.) Accordingly, the contractor is regarded as the consumer of the UPS installed at United States’ facilities. 8/5/96.

**190.2320 United States Contractors.** An intrusion detection system furnished and installed under a contract with the U.S. Navy is properly classified as materials and fixtures rather than machinery and equipment.

The property in question included shielded copper wire with a vinyl or metal foil jacket, a decoupler and terminator attached to the cables to stop electronic signals in the cables (comparable to transformers), electrical switch gear and transceiver modules that send and receive FM signals akin to a component in a fire alarm system. None of the individual components of the system nor the completed system as a whole perform any of the functions of machinery and equipment listed in Regulation 1521(a)(6). In fact, they are more closely related to the items specified in that section as not being machinery and equipment. In addition, the property was installed into the realty and the manner of its annexation to the realty

shows that, even if it could be removed, it was intended as a permanent part of the realty. Furthermore, the property was installed to serve a beneficial purpose for the host making that realty more suitable for its intended use as an airfield. As such, the property is consumed by the installing contractor and not resold to the Navy. 7/26/90.

[190.2332](#) **Volley Ball and Badminton Equipment.** The sleeves for the poles of the volley ball and badminton equipment, which are set in the floors of gymnasiums, are regarded as “materials.” The poles, nets and other component parts of the volleyball and badminton equipment are neither “materials” nor “fixtures” since they are readily removed from the gymnasium floor and are not intended to be permanently affixed to the building. Instead, they are regarded as tangible personal property and the taxpayer is the retailer of such component parts. 8/8/95.

[190.2334](#) **Walk-In Cooler.** A manufacturer states that the walk-in coolers are prefabricated at its plant and assembled as a prefabricated unit at the job site. They are fastened to the floor via the use of a ram set (trade name) gun using ram set fasteners, and to the walls via lag bolts or ram set fasteners. The walk-in cooler does not lose its identity as a walk-in cooler and may be removed (with a considerable amount of time and effort) and reinstalled at other locations.

Walk-in coolers are regarded as “materials” in those instances where they are affixed to and become an integral part of the real property. If the job merely entails fastening a self-contained unit to realty which does not lose its identity and can be removed without damage to realty, the walk-in cooler in this instance would properly be classified as a fixture. In the latter instance, tax would be due on the sales price of the material plus the fabrication labor involved prior to installation. 5/11/62; 6/27/62.

(See subsequent amendments to Regulation 1521 re measure of tax on fixtures manufactured by contractor.)

[190.2335](#) **Walk-In Coolers.** Walk-in coolers are also called cooler boxes, freezers, or refrigeration “rooms.” The classification of walk-in coolers and the respective tax application is as follows:

(1) Freestanding, prefabricated, self-contained units manufactured at the manufacturer’s plant and transported as completed units to the jobsite.

These are tangible personal property, machinery and equipment, and tax applies to the gross receipts from this sale at retail. If these are furnished as a part of a construction contract the measure of tax is determined under the criteria set forth in Regulation 1521(b)(2)(C).

(2) Prefabricated units which do not lose their identity when installed but which are affixed to the structure in such a manner that they become fixtures.

Prefabricated units, when finally installed, are fixtures under Regulation 1521 but are treated as fixtures only in the hands of the person who affixes them to the realty. These rooms must be connected to the coolant system before they are fixtures.

If all the manufacturer of the walk-in cooler does is take prefabricated panels to the jobsite and there assemble them into a freestanding room, the assembled room

is tangible personal property in his hands and when sold by him, although it is a component of a fixture when affixed to the realty by someone else. The prime contractor who is required to furnish and install the assembled refrigerated room is the retailer of the fixture unless the prime contract is with the United States in which case the installing contractor is the consumer of the fixture.

If the same person assembles the panels into the freestanding room and affixes it to the coolant system, the room is a fixture and the measure of tax is governed by Regulation 1521(b)(2)(B) or section (b)(1)(A) if the prime contract is with the United States.

(3) Walk-in coolers which are a combination of materials and fixtures. These units consist of sills which are affixed to the concrete floor by nails or bolts. Panels are affixed to the sills panel by panel until the room is assembled. If walk-in coolers are constructed in the above manner, the sills, wall panels, roof panels, and doors are materials. The refrigeration units, which includes the compressor and evaporators, are fixtures. Piping installed to connect the compressor with the room is materials. 8/4/77.

[190.2338](#) **Wall Panels.** Wall panels furnished and installed to realty are materials but free-standing panels not attached to realty are tangible personal property. Bookcases, cabinets, etc., attached to panels affixed to realty are fixtures but are tangible personal property when affixed to free-standing panels. 9/3/86.

[190.2340](#) **Wall-to-Wall Carpet.** Wall-to-wall carpet is regarded as part of the real property even though the method of attachment may be such that the carpet can readily be removed or changed in its position, as the so-called “loose-lay” carpet attached by a sticky tape. 8/24/64.

190.2350 **Wardrobes.** A taxpayer has a contract with the military to furnish and install steel wardrobes. The wardrobes are designed for storage of clothes and personal effects and are attached with two screws to the wall of a military housing unit.

These wardrobes constitute fixtures under Regulation 1521. They are fastened to the realty and are adaptable to the realty to which they are annexed. The wardrobe units are integral to the function for which the military housing units are intended, i. e., residency for military personnel. The taxpayer is the consumer of the wardrobes installed and the proper measure of tax is the taxpayer’s purchase price. 5/14/85.

190.2351 **Wardrobes.** Prefabricated steel wardrobe closets which are designed for storage of clothes and personal effects and are attached with two screws to the wall of a military housing unit are fixtures under Regulation 1521. Wardrobe facilities are integral to the function of a building for residency purposes and the manner of fixation is permanent enough to make the building complete for the function for which it is intended. That these units are modular and easy to install does not undercut the nature of their function to improve and perfect the habitability of the structure in which they are installed. 5/6/85.

[190.2360](#) **Water Heaters.** A water heater is considered a “fixture” and as such the sale thereof by a contractor is a taxable sale. Measure of the tax is the selling price of the heater exclusive of any charge for installation. Under a lump-sum contract by

a contractor who is not the manufacturer of the fixture, the contractor's cost is the measure of the tax. If a contractor purchases such a heater tax paid and installs it under lump-sum contract, no further tax is due. 12/21/53.

**190.2380 Water Softener.** A water softener is a "fixture" and tax applies to amount charged by contractor for the fixture, exclusive of installation charges. Under a lump-sum contract where the contractor is not the manufacturer, the sales price for tax purposes is the cost of the fixture to the contractor. 11/13/53; 10/20/53.

**190.2400 Window Frames and Window Screens.** These are "materials". 11/21/51.

**190.2402 Wrought-Iron Gates.** A wrought-iron gate 7'6" high and more than 20 feet wide is considered materials akin to doors and fencing, even though it may be fabricated offsite and installed as a unit. 12/20/91. (c) MEASURE OF TAX

**190.2410 Buildings Approved by the Office of the State Architect.** School buildings which are not approved by the Office of the State Architect are not "factory-built school buildings" as defined in section 6012.6 even though the school buildings may be designed in compliance with state laws for school construction. 8/23/91.

**190.2420 Components. Turbines, Pump-Turbines and Kaplan Turbines and Governors** are "fixtures." As the installer is the retailer, his gross receipts must be ascertained. The fixtures are partially manufactured at the factory, and shipped unassembled or as subassemblies to the jobsite. If the final assembly at the jobsite involves only the attaching of components to real property prior to any further assembly of personal property components, tax does not apply to such installation labor. If, however, there is any jobsite assembly or processing of personal property prior to its being affixed to real property, charges for such assembling or processing would be subject to tax. 4/7/66.

**190.2435 Contract Modification—Passage of Title.** A construction contractor enters into a contract to construct improvements to realty in California and to furnish machinery and equipment. The construction contractor is required to install the machinery and equipment. Title is specified to pass on delivery to the job site. After delivery of some of the machinery and equipment, the parties negotiate a modification to the contract, one result of which would be to reduce the tax applicable to the transaction by having title pass before delivery. This would eliminate transportation charges from the amount subject to tax.

Even though parties may change their rights and obligations as between themselves, a change in an existing contract cannot change the rights of the state which vested when title passed. The negotiated modification cannot re-vest title in the seller so as to change the amount of tax due with respect to items, title to which has already passed to the buyer. 3/29/67.

**190.2450 Customs Duty.** Section 6011(c)(4)(A) of the Revenue and Taxation Code provides that manufacturers' or importers' excise taxes are includible in the definition of "sales price" (except as provided in subparagraph (B)). The terms "customs duty" and "importer's excise" are synonymous, and therefore, customs duty paid by a contractor on imported fixtures subsequently resold in a lump sum construction contract was part of the sales price of the fixtures and was subject to sales tax. 2/11/70.

**190.2476 Failure to Notify Seller that Materials are Being Purchased for Use Outside California.** Construction materials which are withdrawn from a construction contractor's tax-paid inventory for use outside the state do not qualify for exemption under section 6386 of the Revenue and Taxation Code. To qualify for the exemption, the construction contractor must notify the vendor at the time of purchase that the materials are being purchased for use outside California. 10/29/75.

**190.2478 Final Act of Installation.** A subcontractor welds pipe which is laid by the prime contractor. The subcontractor is regarded as providing taxable fabrication labor. If the subcontractor both welds and lays the pipe, the subcontractor is performing the final act of installing the pipe and is the consumer of "materials." In that case, the fabrication labor charges are not taxable because he is not fabricating customer furnished material within the meaning of section 6006(b). 7/18/68.

**190.2480 Fire and Security Alarm Systems.** A taxpayer contracts to furnish, install, and monitor fire and security alarm systems. The contract is for 36 months and the customer pays a monthly monitoring fee. In addition, the customer pays the taxpayer an amount for the alarm system itself. Sometimes this amount is the taxpayer's cost for the alarm system, or it may be marked up. At the end of the 36 month contract the customer receives a certificate of ownership of the alarm system.

Under these facts, the taxpayer is a construction contractor who furnishes and installs alarm system fixtures. Although title to the alarm system is held by the contractor as security for the payment of the contract amount, the transfer of possession of the alarm system to the customer upon installation is a sale of tangible personal property within the meaning of section 6006(a) and (e).

Since the alarm system is a fixture, the contractor is the retailer of that alarm system. Therefore, the contractor is liable for sales tax measured by the sales price of the alarm system fixture which is stated in the contract with the customer. If no sales price is stated in the contract, the sales price is deemed to be the cost price of the fixture to the contractor. If the contractor purchases the fixture in a completed condition, the cost price is deemed to be the sales price of the fixture to the contractor. If the contractor has not purchased the fixture in a completed condition, the cost price is determined as set forth in Regulation 1521(b)(2)(B)2.b.). 2/27/95.

**190.2485 Freight-In Part of Gross Receipts.** When a construction contractor purchases and installs fixtures without further manufacturing, the freight-in to the contractor is not subject to tax if excluded from "gross receipts" under section 6012 or from "sales price" under section 6011.

When a construction contractor purchases fixture components and performs further manufacturing or assembling of the components, the freight-in to the contractor is subject to tax as part of the "cost price" of the fixture to the contractor. An example of the latter situation would be a construction contractor who purchases a pump and a frame; expends labor in attaching the pump to the

frame; and installs the pump/frame combination on real property. Freight-in on the pump and frame is subject to tax. 6/23/76.

**190.2487 Fungible Goods—Steel Fabricator.** A steel fabricator subcontracts with steel manufacturers to fabricate and install reinforcing bars furnished by the steel manufacturers. The fabrication consists of shearing the steel to the required length and bending it to shape.

The contracts specify that reinforcing bars are to be furnished by the steel manufacturers. However, because of inventory considerations, the steel fabricator sometimes uses its own reinforcing bars or another steel manufacturer's job inventory. Eventually, however, the steel fabricator obtains from the various steel manufacturers a sufficient quantity of bars to satisfy the requirements of various steel companies it has contracts with.

In situations of this type, the proper solution is to follow the thinking used in the fungible goods section of the law. Thus, as long as the steel fabricator has enough on hand obtained from the particular steel manufacturer to satisfy that steel manufacturer's requirements, the fact that this steel is commingled with steel obtained from the other companies will not result in tax liability on the theory that the steel fabricator purchased steel from the other companies. On the other hand, if, in order to fulfill an order, the steel fabricator must use steel in excess of that which it has on hand which originally came from the contractor giving the order, the steel fabricator will be considered as having purchased such excess steel and the tax would apply to its cost price. 7/24/64.

**190.2490 Hawaii Construction Projects.** An out-of-state contractor who has a California consumer use tax account specializes in earthquake construction. They design, fabricate, install and test earth retention systems and soil or rock tieback anchors. The company is involved in several Hawaiian construction projects which might result in the imposition of California sales tax under the following circumstances:

(1) The purchase of building materials to be physically incorporated into or consumed on the project from a California vendor for shipment to a temporary storage site in California. These properties would be ultimately shipped to Hawaii for physical incorporation, use, or consumption on the Hawaii jobsite.

Sales tax would apply to the sale of the materials and other supplies because the California tax is imposed upon the vendor and the property is delivered to the purchaser in this state. The exemption provided in section 6386 for out-of-state contractors applies only to sales to persons who hold a valid California seller's permit.

(2) Same factual circumstances as above, except that the property is fabricated to job specifications in California at the temporary storage site.

Again, the vendors' sales of the materials are fully taxable as described above. In addition, tax would also apply to charges made by independent contractors for fabrication work performed in California; however, no tax would apply to the fabrication if the work is performed by the company's own employees.

(3) The lease of construction equipment from California lessors, shipped to temporary storage sites in California, with ultimate shipment to Hawaii for use at the jobsite.

Any lease of equipment to the company, whether tax-paid or ex-tax in the hands of the lessor, would not be subject to California sales or use tax under section 6009.1 “Storage and Use Exclusion.” The construction company will be making a functional use of the equipment in Hawaii and is holding the equipment in California only for the purpose of transporting it to Hawaii for use solely outside this state. 8/27/93.

**190.2497 “Male” Telephone Connector.** A “male” telephone connector is made of hard plastic and is approximately 4 inches long by 1 1/2 inches wide. This connector is attached by wire to a standards telephone handset. The telephone handset with the male connector is plugged into a similar “female” connector which is wired to the building. This “male” connector with standard telephone handset is general purpose, off-shelf modular switching equipment since it is sold for use in general purpose office buildings pursuant to Regulation 1521(c)(8) and therefore constitutes “machinery and equipment” under Regulation 1521(a)(6). The female connector wired into the building is “materials” pursuant to Regulation 1521(a)(4). 8/29/88.

**190.2500 Marked-up Billing for Materials.** In making improvements to real property, a contractor billed the customer for materials at cost, added fifteen percent for overhead, computed sales tax reimbursement upon the total of these two items, and then added an additional ten percent for profit. The measure of tax is the amount upon which the contractor computes sales tax reimbursement. It includes the fifteen percent mark-up because that was used in computing sales tax reimbursement and excludes the ten percent mark-up because that was not used in computing sales tax reimbursement. 4/1/53.

**190.2501 Marked-up Billing for Materials.** If a contractor bills a customer an amount for “sales tax” computed upon his/her marked-up billing for materials, it is assumed in the absence of convincing evidence to the contrary that he/she is a retailer of the materials. It is immaterial that the contractor’s software billing program does not allow for lump-sum invoicing or that the billing method is required by the customer. 10/28/93.

**190.2508 On-premise Electric Signs.** On and after October 1, 2000, when a lump-sum construction contract for the furnishing and installation of an on-premise electric sign by the seller does not contain a separately stated sales price for the sign, the measure of tax shall be thirty three percent of the total contract price and not some greater or lesser amount. Regulation 1521(c)(12)(B). 12/31/01.

**190.2510 Out-of-State Construction Contractor—Sales v. Use Tax.** An out-of- state construction contractor who does not have a place of business in California is not subject to sales tax but rather is subject to use tax on fixtures installed in California, even though it has representatives supervising and installing the facilities during the construction period and title to the fixtures passes in this state (Regulation 1620(a)(2), *Norton Co. v. Dept. of Revenue of State of Illinois*, 340 U.S. 534, 95 L. Ed. 517). 2/26/85.

(Note: Subsequent statutory change re definition of other place of business.)

**190.2511 Out-of-State Contractor—Short Ends.** The following guidelines apply to out-of-state contractors who purchase and fabricate materials out of state and install the property in California, but the short ends or scrap resulting from the fabrication process do not enter the state:

(1) As to short ends which are sold, a reduction in the purchase price of materials subject to use tax is allowed for the price at which the contractor sells the short ends.

(2) As to short ends incorporated into another job out of state, a reduction in the purchase price of materials subject to use tax is allowed by the prorated cost of the short ends.

(3) As to short ends not sold or used on another job, no reduction in the purchase price of materials subject to use tax is allowed. 7/13/82; 5/14/96.

**190.2515 Proper Period for Reporting “Fixtures” and “Materials.”** The proper period for reporting sales of fixtures and consumption of materials for transactions constituting “construction contracts” under Regulation 1521 are:

(1) Tax is due for installed fixtures no later than the reporting period during which they are installed; and

(2) Tax is due on materials for the reporting period during which they are allocated to a contract.

This rule is applicable to construction contractors who furnish and install fixtures and/or materials in the performance of construction contracts. 8/11/78.

**190.2520 Reporting Period.** A construction contractor who has purchased materials ex-tax for resale becomes liable for use tax upon such materials and should report the same in the reporting period in which the material is taken from stock for use in performing a construction contract. Where “fixtures” are furnished and installed, they should be reported for the quarterly period in which installation is made. 1/29/57.

**190.2535 Subletting of Steel Fabrication.** The fact that a taxpayer who is a steel fabricator and construction contractor sent out some of its steel to be fabricated because a deadline prevented him from fabricating all of the steel in his own plant does not prevent the tax from applying to the charges for fabrication of the steel by the outside fabricator when the taxpayer is the consumer of the steel. 3/22/73.

**190.2540 Television Antenna.** Where a retailer furnishes and installs television antenna and is not the manufacturer thereof, the retail sale price is regarded as the cost of the antenna to him provided the retailer makes a lump-sum charge. This will be true whether one lump-sum charge is made for everything including the set, the antenna and installation of both or whether one lump-sum charge is made for the set and its installation and another lump-sum charge is made for the antenna and its installation. 12/24/54.

**190.2545 Time and Material Contracts.** Under a time and material construction contract which includes a separate charge itemized as “sales tax,” the contractor is the retailer whether the property installed constitutes materials or fixtures. Sales

tax applies to the separately stated charge for the property, including markup and fabrication charges. 11/14/94.

**190.2548 Transportation Charges.** A construction contractor purchased a crane from an out-of-state vendor. The crane is shipped to the jobsite by the vendor by common carrier in a completed condition. The contractor installs and tests the crane but performs no jobsite assembly. Title passes from the contractor to the purchaser at the completion of the installation and testing. The contract for the sale and installation of the crane does not separately state the sales price of the crane; therefore, tax is measured by the cost of the crane to the contractor. Since transportation charges are separately stated by the vendor, the transportation charges are not regarded as being part of the measure of tax. 11/9/94.

**190.2550 Travel Time—Installing Custom Cabinets.** If the cabinets are materials, then the construction contractor is the consumer of the cabinets furnished and installed in the performance of a construction contract. The sale of the materials to the contractor is subject to tax, and the contractor's charges to the customer for furnishing and installing the cabinets, including charges for travel time to and from the job site, are not taxable.

When cabinets are regarded as fixtures under Regulation 1521 (c)(2), the contractor is the retailer of the cabinets. If the contract states the sales price at which the cabinets are sold, and separately states the charge for installation, tax applies only to the sale price. Installation charges may include charges for travel time to and from the job site but only if the sole purpose of the travel is for the installation of the cabinets. 1/21/93.

**190.2560 Trees.** Inasmuch as a tree is a fixture, a person who purchases a tree and grows it into a mature tree of substantial size and value is regarded as the "manufacturer" thereof. Accordingly, the measure of the tax is the cost price, which is deemed to be the price at which similar fixtures in similar quantities ready for installation are sold by the person to other contractors. 12/2/66; 1/14/85.

**190.2580 United States Construction Contractor.** A construction contractor acquires property outside California and title is immediately transferred to the United States. At the time the property enters California, it is already owned by the United States. Its use by the United States is exempt from tax.

If the sale to the construction contractor occurs in California and the property is used for the construction of improvements to real property in this state, under sections 6007.5 and 6384 the sale to the construction contractor is a retail sale subject to tax. Since the sale to the construction contractor in California is a retail sale, the fact that title may **thereafter** pass to the United States is immaterial. The retail sale of such property to the construction contractor in California is subject to sales or use tax. If the construction contractor gives the seller a resale certificate, the construction contractor is liable for use tax. 7/24/91.

**190.2595 Windows Furnished and Installed by Subcontractor.** A prime contractor contracts with its customers to furnish and install insulated windows. Taxpayer manufacturers such windows and pursuant to subcontracts with the prime contractor, furnishes and installs them. The subcontractor states a separate charge

for materials and for labor. An amount is also added as “sales tax” on the charge for materials.

Windows are regarded as materials and a construction contractor is generally the consumer (as opposed to a retailer) of materials which the contractor furnishes and installs in the performance of a construction contract. Tax applies to the sale to, or the use by, the contractor of those materials. However, in the instance of “time and material contracts,” if the contractor bills its customer an amount for “sales tax” computed upon its marked up billing for materials, the contractor is presumed to be the retailer of the materials and would owe sales tax on its selling price of the materials. The contracts between the prime contractor and the subcontractor (taxpayer) are time and material contracts. Since the taxpayer bills the prime contractor for “tax” computed upon its charge for materials, the taxpayer is presumed to be the retailer of the materials. As such, sales tax applies to the taxpayer’s gross receipts from the sales of the materials to the prime contractor. 3/24/97.

**(d) FIXTURES AND MATERIALS PURCHASED FOR OUT-OF-STATE USE**

190.2660 **“Fixtures,”** sale of, in this state, to contractor who is to use in construction contract out-of-state is an exempt sale for resale. 7/26/51.

190.2675 **Materials Purchased In State for Use Out of State.** Contractors holding California seller’s permits may present exemption certificates as authorized by section 6386 and thereby cause the sale of materials to be exempt from sales tax even though the contractor might take delivery of the property in this state for its use in an out-of-state construction contract.

If the contractor does not hold a California seller’s permit, it is still possible to purchase the materials under a resale certificate by presenting information as to seller’s permits held in other states. The use of such a certificate is authorized only in those instances in which the contractor cannot at the time of purchase determine whether the materials will be sold or incorporated into realty in the process of performing a construction contract. If the materials are purchased for a particular job in California rather than addition to inventory, tax would apply. Even if the materials are placed in inventory, said inventory must be of the type from which outright sales are made and from which withdrawals are made in connection with out-of-state construction contracts.

If a state does not have a sales or use tax law, there is no possibility that a construction contractor would be defined as a retailer of the items used in the process of improving real property. Sales will, therefore, be taxable unless within the exemption mentioned above or unless the out-of-state person’s transfers in fact qualify as retail sales under the California Act even though they are not made in this state. 2/7/61.

190.2680 **“Materials,” Purchased Outside State or in Interstate Commerce,** used in fulfilling construction contract outside state, although stored here prior to use, are not subject to use tax. 7/26/51.

190.2690 **Modular Homes for Export.** A taxpayer manufactures modular homes from used cargo containers which are purchased in California. The houses are shipped

overseas where they are installed onto real property by the taxpayer. The taxpayer wishes to avoid tax by qualifying under section 6067 which exempts from tax sale of construction materials and fixtures to persons holding seller's permits and who use the property in the performance of a contract to improve realty outside the state. The taxpayer may not obtain a seller's permit solely for the purpose of qualifying for the exemption. A seller's permit can only be issued to a person who is in the business of selling tangible personal property in California. 11/4/94.

**190.2700 Permit, Unauthorized Use of.** Section 6072 precluding the holding of a seller's permit by a person not actively engaged in or conducting business as a seller of tangible personal property prevents a construction contractor from securing a permit solely to qualify for the exemption provided in section 6386. A contractor actually holding a permit but not actively engaged in or conducting business as a seller is not entitled to retain his permit solely to take advantage of section 6386. 8/10/66.

**190.2710 Prefabricated Cabinets—Out-of-State Contracts.** A construction contractor installs prefabricated cabinets, as defined under Regulation 1521(c)(2), at an out-of-state job site. The materials that will be incorporated into a fixture of which the contractor will be the retailer may be purchased under a resale certificate. If however, the cabinets are not prefabricated, a resale certificate cannot be issued but the contractor may purchase materials exempt from sales tax under section 6386 if all the conditions set forth under that section are met. 12/30/93.

**190.2720 Resale Certificates.** Sales of materials delivered in California to an out-of-state construction contractor for his use are taxable where the latter has no valid California seller's permit, even though he may hold a seller's permit issued by another state. However, if the vendee is, in fact, a retailer as well as a construction contractor, a resale certificate may be accepted, provided the vendee is unable to tell at the time of the purchase whether the property will be consumed or resold. A resale certificate may not be accepted solely on the basis that the state in which the construction contract is to be performed treats construction contractors as retailers of materials. 1/24/61; 7/24/87.

**190.2721 Resale Certificates.** A California construction contractor keeps its materials inventory on an ex-tax basis by:

- (1) providing resale certificates to California vendors;
- (2) not paying use tax on out-of-state purchases; and
- (3) taking a tax paid purchase credit upon return of materials from California jobs to inventory where the tax had been previously paid. The only proper reasons for holding ex-tax inventory of materials by a construction contractor are:
  - (1) to hold for resale in the regular course of business, and
  - (2) to hold for subsequent use solely outside the state property purchased under an exemption certificate as provided in section 6386.

The Board has held that if a purchaser is a retailer as well as a construction contractor, a resale certificate may be accepted, provided the purchaser is "unable to tell at the time of the purchase whether the property will be consumed or resold."

Since the contractor does not buy the property for resale, it can not issue resale certificates. If it has not already paid tax on the use of property, it must do so no later than the property's removal from inventory for a California job. There is no tax credit available if property is placed into inventory after having been purchased tax-paid for a specific job. The only deduction available under these circumstances would be a tax-paid resold deduction as explained in Regulation 1701, for property that the construction contractor later resold in California. 7/22/93.

**190.2725 Resale Certificate—Out-of-State Sale/Use.** A lump-sum construction contractor is engaged in manufacturing, selling, and installing molding, reception stations, cabinets, showcases, free standing furniture, and bars. The contractor purchased, under a resale certificate, building materials which were used on an out-of-state job. About 45 percent of the materials were incorporated into free standing furniture and fixtures for the out-of-state job. The balance was used to improve real property on the out-of-state job, and consisted of “materials” as that term is used in Regulation 1521.

A contractor may properly purchase all construction materials under a resale certificate provided at least some of the materials are incorporated into fixtures or furniture that is resold. Therefore, property purchased ex-tax under a resale certificate and removed from inventory for the purpose of transporting it outside of California for use thereafter solely outside California is exempt from tax. (Sections 6008 and 6009.1.) 3/16/94.

**190.2730 Timeliness of Certificate of Out-of-State Use.** The requirement of section 6386 that the purchaser certify to the seller that the property will be used in a manner and for a purpose specified in the section is satisfied only if the seller obtains the certificate from the purchaser at the time of the transaction and thereafter retains it for examination on request by the Board or its authorized representatives. 7/26/71.

**(e) FIXED-PRICE CONTRACTS**

**190.2805 Change Orders—Fixed Price Contracts.** Change orders to an existing contract are separate contracts. 7/22/92.

**190.2810 Criteria for Fixed Price Contracts.** A taxpayer who filed a claim for refund contends that the agreement at issue was a fixed price contract so that the tax should have been applied at the effective rate prior to July 15, 1991. In determining whether a contract, other than construction contracts (see 190.2835) or leases (see 330.1870), is a “fixed-price” contract, it must meet all of the following criteria:

- (1) it must be binding prior to July 15, 1991;
- (2) it must fix the amount of all costs at the outset; and
- (3) it must include a provision which fixes the tax obligation on a tax-included basis or sets forth the rate of tax and does not provide for an increase in the amount of tax.

The agreement is dated February 7, 1992, but states that it “acknowledges the agreement between the parties as of June 25, 1990.” The claim for refund states

that the sale agreement at issue is dated September 27, 1990. The agreement states that the price is not fixed but may be adjusted. The agreement also provides that the buyer shall be responsible for all the taxes, including state sales and use taxes. Even if the agreement dated February 7, 1992 relates back to June 25, 1990, or September 27, 1990, it does not meet criteria 2 or 3. Therefore, the agreement at issue is not a fixed price contract. 4/20/93.

**190.2825 Definition of Fixed Price Contract.** To qualify as a fixed price contract under section 6376.2 for purposes of avoiding increases in the tax rate, a contract must meet four criteria: (1) it must be binding prior to the effective date of the contract; (2) neither party has an unconditional right to terminate that contract; (3) the contract must fix the amount of all costs at the outset; and (4) the agreement must include a provision which fixes the tax obligation on a tax-included basis or sets forth either the amount or the rate of tax and does not provide for an increase in the amount of the tax.

A purchase order by itself is not a contract, but if it is accepted by the date of the tax increase becomes a contract. Shipment is a reasonable mode of acceptance of the purchase order. 12/6/93. (Am. 2000–1).

**190.2835 Determining Criteria for Fixed Price Contract Exemption.** In determining whether a construction contract is a “fixed price” contract under section 6376.1, it must satisfy the following criteria:

- (1) it must be binding prior to July 15, 1991;
- (2) neither party may have an unconditional right to terminate the contract;
- (3) the agreement must fix the amount of all costs at the outset; and
- (4) the agreement must include a provision which fixes the tax obligation on a tax-included basis or sets forth either the amount or the rate of tax and does not provide for an increase in the amount of tax.

Criteria number (3) is not met when the contractor reserves the right to increase its charges for labor and materials based on cost increases as measured by the Current Labor Indices and Current Material Indices. In addition, criteria number (4) is not met when the agreement requires the client to be responsible for any and all taxes enacted subsequent to the date that the bid was received. 1/31/92.

Note: Fixed price contract includes a contract which is for a fixed amount and contains no provisions at all regarding California sales and use taxes. See Annotation 800.0009.) (Am. 2000–1).

**190.2837 Fixed Price.** A construction contract is fixed in price under section 6376(a) Revenue and Taxation Code if the contract requires the contractor to furnish and install specified materials at fixed unit prices for each item of materials. The fixed unit prices must either be tax-included prices or they must separately state the tax rate which was in effect prior to an increase. However, if the contract merely estimated the prices of materials to be furnished by the contractor, pursuant to the contract, that contract would not be a fixed price construction contract which qualifies for the exemption under section 6376.

The contract will also not qualify for the exemption from a tax increase as a fixed price contract if either the contractor or the property owner may unconditionally terminate the contract. (Section 6376(c) Revenue and Taxation Code.) 3/9/90. (Note: Section 6376 was repealed effective January 1, 1992.)

190.2837.010 **Fixed Price.** A construction contract containing the following wording is a fixed price contract for purposes of section 6376:

“SCHEDULE OF PRICES. All applicable sales taxes, State and/or Federal, and any other special taxes, patent rights, or royalties are included in the prices quoted in this Proposal.”

The contractor may purchase materials for use in this contract, if it was entered into before Nov. 8, 1989, without payment of the 1/4% increase in the state tax rate effective December 1, 1989, by issuing an exemption certificate in the manner provided by Regulation 1667, and may sell fixtures under this contract at the prior rate. 4/23/90.

(Note: Section 6376 was repealed effective January 1, 1992.)

190.2838 **Fixed Price Contract.** A county issues a quotation request for four dump trucks which is contemplated by potential sellers to constitute their offer. The county then accepts an offer by the issuance of a purchase order. The seller's offer was due November 9, 1990, and on November 28, 1990, the county issued a purchase order which listed the sales price plus sales tax computed at the rate in effect at that time. The dump trucks were delivered after July 15, 1991. Based on the contract documents there was no provision that either party could terminate the contract upon notice. Therefore, since the contract was entered into prior to July 15, 1991, the sale qualified as a fixed price contract and is exempt from the tax rate increase which became effective on July 15, 1991. 11/14/91.

190.2838.500 **Fixed Price Contract—Materials.** A contract provides that a purchaser could vary the quantities ordered by using a change order, but it could not do so without making an “equitable adjustment.” The contract also provides that if the purchaser terminates the contract, the seller is entitled to an “equitable adjustment” for materials in progress. Neither of these provisions would prevent the contract from qualifying as a fixed price contract. 1/19/90.

190.2839 **Fixed Price Contracts.** To qualify for the exemption provided in Sales and Use Tax Law section 6376 for fixed price contracts, a construction contract must be for a specific price, which may not be increased due to an increase in the sales and use tax rate applicable to tangible personal property required to be furnished under the contract.

A cost-plus-a-fixed-fee contract is not for fixed price even if it provides for a guaranteed maximum price.

A cost-plus-a-percentage-fee contract that specifies certain costs that will not be reimbursed but does not preclude the contractor from passing on an increase in sales tax is also not a fixed price contract. 7/26/90.

190.2840 **Fixed-Price Contract—Open-ended Terms.** A contract may qualify as being for a fixed price even if one or more terms are left open. Under the Uniform Commercial Code (U.C.C.), a contract for the sale of goods is enforceable even

though one or more terms is left open where parties intend to make an agreement and there is a reasonably certain basis for giving an appropriate remedy. (Cal. U.C.C. section 2204(3).) Where the quantity of property to be purchased and sold and/or the time for delivery cannot be determined from the agreement, however, it is too indefinite to fashion a remedy. Such a contract does not qualify for the exemption. 12/19/91.

**190.2843 Fixed Price Contracts.** For a contract to qualify for exemption from the sales and use tax increase of July 15, 1991, as a “fixed price” construction contract, it must meet the following criteria: (1) it must be binding prior to July 15, 1991, (2) neither party has a right to terminate the contract conditioned solely upon notice; (3) the agreement must fix the amount of all costs at the outset; and (4) the agreement must include a provision which fixes the tax obligation on a tax-included basis or sets forth either the amount or rate of tax and does not provide for an increase in tax.

A contract entered into on May 28, 1991 which was for a fixed price, which allowed for termination at the convenience of the customer upon payment for work done prior to termination, and which specified that all taxes were included succeeds in meeting the criteria and is exempt from the tax increase.

Change orders executed after July 15, 1991, are considered new contracts and do not invalidate the “fixed price” nature of the original contract. Such change orders are subject to the new tax rates. 9/16/92.

**190.2844 Fixed Price Contracts.** A contract provides under a termination clause that if the contractor and the owner have the right to terminate the general contract, then the contractor can terminate the contract with the subcontractor.

If the subcontract incorporates by reference the terms of the general contract and if the general contract provides the parties the right to cancel the contract unconditionally, neither contract qualifies as being for a fixed price.

When dealing with the earthquake tax, if the prime contract qualifies as a fixed price contract, the subcontract also qualifies. However, this rule does not apply to the exemption for fixed price contracts under district taxes. In that case, each contract must qualify on its own. 7/10/91.

**190.2850 Earthquake Tax Increase.** “For building contracts to qualify for the” fixed-price contract exemption from the “earthquake tax” they must possess the following characteristics:

1. They must be binding on the parties prior to the operative date of the “earthquake tax”, November 7, 1989;
2. They must set forth the amount of tax, by stating either the amount or rate of tax or that tax is included in the total price;
3. There is no provision in the contract by which the tax or rate may be adjusted to reflect change in the sales tax rate; and
4. Neither party has retained in the contract the right to unconditionally terminate the contract. 6/10/91.

190.2865 **Fixed Price Leases.** For a lease to qualify for exemption from the sales and use tax increase of July 15, 1991, as a fixed price contract, it must satisfy the following criteria: (1) it must be binding prior to July 15, 1991; (2) neither party has a right to terminate the contract conditioned solely upon the notice; (3) the agreement must fix the amount of all costs at the outset; and (4) it must include a provision which fixes the tax obligation on a tax-included basis or sets forth either the amount of tax or the rate of tax and does not provide for an increase in the amount of tax.

A lease containing the following clause fails to satisfy condition (4) above: “TAXES. Lessee should reimburse lessor for (or pay directly if instructed by lessor) all charges and taxes (local, state and federal) which may now or hereafter be imposed or levied upon the sale, purchase, ownership, leasing possession or use of Equipment . . . ”

A lease containing this type of clause permits the lessor to pass the tax increase on to the lessee and is, therefore, not for a fixed price. 8/25/92.

190.2900 **Irrevocable Bids.** A contractor will be considered to have entered into a fixed price contract prior to July 15, 1991, if prior to that date he/she submitted a bid that became irrevocable prior to that date and was accepted prior to becoming revocable, even if such acceptance occurs after July 15, 1991. 7/16/91.

190.2901 **Irrevocable Bids.** A subcontractor has submitted an irrevocable bid to a general contractor who has in turn submitted an irrevocable bid for a public agency construction contract. The agency is not ready to award the contract and requests an extension. The contractors have two options only—cancel their bids or agree to extend them on the original terms and condition. Because the contractors have the ability to walk away from the bid and refuse to go through with it in the event of a tax increase, it is considered that the bid does not qualify as an agreement for a fixed price. 7/15/91.

190.2975 **Obligation of Parties.** In retail sales contracts, only one party need be obligated for the grandfather exemption of fixed price contracts entered into prior to July 15, 1991, to apply, but in construction contracts, both parties must be obligated. 6/17/92.

190.3000 **Prior to July 15, 1991.** A contractual agreement, executed June 12, 1991 obligates both the buyer and the seller to purchase/sell \$250,000 worth of insulation products over an open ended period of time.

This contract appears to be a requirements contract. A true requirements contract requires that the buyer agrees to fill all his needs from the seller whereas in this contract a dollar limit is set. In addition there is no per unit price, leaving the amount of units in doubt. The open ended time period for delivery would render it difficult if not impossible to fashion a remedy between the parties. This agreement is not for a fixed price within the meaning of section 6376.1. 12/13/91.

190.5000 **Right to Terminate.** A contract provides the buyer with a right to terminate the contract but its exercise subjects the buyer to payment obligations as a condition of termination. Upon receipt of such notice, the seller’s obligation under the contract is terminated, but the buyer’s duty to recompense the seller still remains

to be performed. Since the right to terminate is not unconditional, the contract qualifies as a fixed price contract. 7/22/92.

**190.5500 Special Order Contracts.** A contract is written for a special order and the customer places a non-refundable 20% down payment. The amount of the sales tax reimbursement is set forth on the special order form. The “Warranties and General Information” section of the form contains the statement: “Special Orders. Please give careful consideration when making your selection. There will be no cancellation accepted on Special Orders, because this merchandise is ordered according to your exact instructions, and may not be right for other customers.”

The special order contract sets forth the amount of tax. The buyer’s right to cancel is subject to the duty to forfeit the deposit; this is not an unconditional right to terminate. Finally, the parties have not reserved the right to alter the tax obligation in the event of a change in tax rates. The special agreement constitutes a contract for fixed price. Special orders executed prior to July 15, 1991, are exempt from the tax increase. 7/30/91.

**190.6000 Subcontractor’s Obligation.** A subcontractor has submitted an irrevocable bid to a general contractor who has in turn submitted an irrevocable bid for a public agency construction contract. The bid contains a provision that it is revoked if the general contractor is not awarded the contract, but otherwise qualifies for a fixed-price contract. The subcontractor’s obligation may be defeated only by a condition subsequent which is not under the subcontractor’s control. The bid still qualifies as being for a fixed price. 7/15/91.

**190.6300 Tax Rate Changes.** Grandfather exemptions from tax increases exist for the following three different tax increases: (1) the 1/4% tax increase (earthquake tax), (2) the 1/2% OCTA and LATC tax increases, and (3) the 1 1/4% state tax increase effective July 15, 1991. Each of these tax increases are covered by a specific and separate “grandfather clause” which exempts certain transactions entered into prior to the operative dates from the tax increase. Each of these laws stands alone, and each is slightly different as it relates to fixed price construction contracts. A clarification of the “grandfather clause” for each of three tax increases as they relate to fixed price construction contracts follows:

(1) 1/4% Earthquake Tax

The “grandfather clause” covering the tax rate increase for the 1/4% (earthquake tax) exempts from that increase fixtures, materials, and supplies obligated pursuant to a fixed price construction contract entered into prior to November 7, 1989.

(2) Transactions Taxes in General (1/2 % OCTA, LATC, etc.).

The “grandfather clause” covering the tax rate increase for OCTA, LATC, as well as other district taxes exempts from that increase fixed price contracts. This includes fixtures obligated pursuant to a fixed price construction contract entered into prior to the effective date of the increase because construction contractors are retailers of fixtures. The “grandfather clause” relating to the tax increase does not provide an exemption from the increase for materials and supplies purchased

pursuant to a fixed price construction contract entered into prior to the effective date of the increase, unless the contractor has entered into a fixed price contract directly with its supplier for these materials and supplies prior to the effective date of the tax increase.

(3) 11/4% State Tax Increase

The “grandfather clause” covering the tax rate increase for the 11/4% state tax increase exempts from that increase materials and fixtures obligated pursuant to a fixed price construction contract entered into prior to July 15, 1991. The “grandfather clause” relating to this tax increase does not provide an exemption from the increase for supplies purchased pursuant to a fixed price construction contract entered into prior to the effective date of the increase, unless the contractor has entered a fixed price contract directly with its supplier for these supplies prior to the effective date of the tax increase. 9/11/92; 5/20/96.

**190.6500 Thirty-Day Proposal—Fixed Price Construction Contract Exemption.**

Taxpayer asked whether a contract with the following wording is a fixed price contract:

“This proposal is effective for thirty days after the date shown above. If this proposal is accepted in this period, the prices shown below are guaranteed by contractor for all materials delivered before \_\_\_\_\_, but in no case more than 120 days from the date of acceptance (“the termination date?”). Thereafter, prices are subject to change on undelivered material to reflect any increase in contractor’s cost.”

The contract guaranties a bid price for thirty days only. Assuming the proposal is accepted within the thirty day period and prior to July 15, 1991, the obligation is a fixed price prior to July 1, 1991. It is, however, fixed only for goods which are delivered prior to the termination date. Sales of goods delivered after the termination date (assuming it is after July 15, 1991) are subject to the increased tax rate. 1/29/92.

**190.6805 Withdrawal from Ex-tax Inventory After Tax Rate Increase.** A construction contractor purchased construction materials ex-tax under resale certificates. It reported and paid tax on the materials when they were sold or when they were withdrawn from inventory for use by the contractor on construction contracts. The contractor entered into fixed price construction contracts. Subsequently, a transit tax was imposed in the district in which the contract was performed. Although the contractor was obligated under the fixed price contracts, the higher tax rate applied because the exclusion from the increase applied only to transactions involving the sale of the property. The construction contractor had purchased the materials before the tax increase. The taxable event was the withdrawal from inventory for the purpose of consumption. There is no exemption from transit tax for property withdrawn from an ex-tax inventory for use on fixed price construction contract even though such contracts were entered into prior to the effective date of the tax. 6/23/94.

**191.0000 CONSTRUCTION CONTRACTOR EXEMPTION FROM INCREASE  
IN RATE OF STATE SALES AND USE TAXES**

*See Construction Contractors.*