Memorandum

190.0115

To: For the Record Date: February 25, 1975

From: T. L. Hartigan

Subject: Car-Wash Machinery Installer

Wayne Ferreira of the Oakland office called 20 February for an opinion whether the installer of car-wash machinery was to be considered a retailer of tangible personal property, i.e., machinery and equipment, or a construction contractor engaged in the erection of a structure and within Regulation 1521. I gave him my opinion that although auto-wash facilities would in common parlance probably be considered machinery and equipment, the tendency has been to interpret 1521 to include those who construct improvements to real property; and in most instances whatever is permanently affixed to realty is considered an improvement. Thus, car-wash equipment being permanently affixed to the realty would be an improvement thereto such that the installer thereof would be a construction contractor within Regulation 1521.

The next issue presented was whether the equipment was "materials" or a "fixture" under the regulation. I gave the opinion that the equipment was a fixture on the basis that it was like an escalator installation which was considered a fixture in B.T.L.G. 190.1540.

Lastly, in view of the fact that the subject installer purchased the equipment already fabricated under a lump-sum contract the measure of tax would be the cost of the equipment to him as per the first sentence of 1521(c). "Contractors are retailers of 'fixtures' which they furnish and install and the tax applies to the retail selling price thereof; which, in the case of lump-sum construction contracts, is regarded as the cost price of the fixtures to the contractors."

TLH W

cc: Legal Staff