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March 24, 1994

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Mr. G--- G---
 Senior Manager
 ---- P--- M---
 --- --- Center
 --- ---, CA XXXXX

Re: **P--- CORP. - SR -- XX-XXXXXX**

Dear Mr. G---:

This is in reply to your January 17, 1994 letter regarding the application of sales tax to charges by P--- CORP. (taxpayer) for repairing or modifying a cargo container crane located at a port in California. You provided the following facts:

"The Taxpayer is a retailer of new cargo container cranes to domestic and international customers. A typical crane is 100 feet high, weighs approximately 1000 tons, and is designed to handle 40 ton payloads. The crane is installed on a short supporting rail on a pier, and is operated electrically. The crane is generally not relocated due to its size, weight, and excessive expense to move (approximately \$700,000+). The Taxpayer charges sales tax on the sales price (average price is \$X,000,000) of the newly manufactured cranes.

"After several years of operation, the Port will consider having a crane modified/repaired to accommodate the newer larger cargo ships. The Port will enter into a construction contract with Taxpayer to modify the crane by lengthening its boom and/or height to allow retrieval of the containers on the taller and wider ships. For example, a lump sum contract could provide for the design, the provision of materials, and the construction of a crane leg raise.

The material content of the contract generally exceeds XX% of the total charge. However, upon completion, the modified crane will still have only a 40 ton pay load capacity."

Given this information, you asked whether "the Taxpayer's lump sum construction contract to modify/repair the existing crane (is) subject to California sales tax in whole or in part."

We agree with your conclusion that the crane, as sold and installed on the supporting rail on the pier and belonging to the owner of the land is a fixture. (See Appendix B of Sales and Use Tax Regulation 1521, Construction Contractors.) We also agree that the modification to the crane does not result in the 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. (Cf. Sales and Use Tax Reg. 1526, Producing, Fabricating and Processing Property Furnished by Consumers - General Rules, subd. (b).)

Finally, we conclude that the application of tax is as provided at subdivision (c)(6) of Regulation 1521; that is, where the taxpayer enters into a lump sum contract to modify the crane to accommodate larger vessels, the taxpayer will be the consumer of the parts it uses and should pay sales tax to its vendors.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:plh