

**STATE BOARD OF EQUALIZATION**1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

February 26, 1975

Mr. W--- C. K---, Jr.
President
E--- of N--- C---, Inc.
XXX --- Road
---, CA XXXXX

Dear Mr. K---:

SR -- XX XXXXXXX

This is in response to your letter of February 10, 1975.

We understand that E--- is a communications company that sells, installs, and services a wide range of products to the commercial and institutional market. The most modern addition to the E--- line is the E--- XXX series intercom. One of the versatile characteristics is the available option to purchasers to either plug in to terminate a desk unit, or to hard wire the unit through to the central exchange.

The advanced technology of the system allows the operator of a desk unit to digital dial over two conductor wire by a series of electronic impulses to a main central exchange. In this exchange is maintained the various addresses of each of the other instruments of the system. The signals received go through a combination of electro mechanical relays and solid state boards to interpret the incoming impulses to generate an appropriate response.

You have sought our advice as to how the Sales and Use Tax Law will apply to the plug-in handset unit. You wish us to confirm it "as a fixture" with tax applying "on cost of material only."

Under our Regulation 1521 "Construction Contractors," one who furnishes and installs an intercom system of the type in question is a contractor engaged in the performance of a construction contract. As paragraph (c) of the regulation provides, contractors are retailers of 'fixtures' which they furnish and install and 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. If the contractor is the manufacturer of the fixtures, the retail selling price thereof is the prevailing price at which similar fixtures in similar quantities ready for installation would be sold to contractors."

As is evident, even if we were to regard the plug-in unit as a "fixture" under our Regulation 1521, the measure of tax would not be "cost of material" but the measure stated in the reference paragraph (c). We are of the opinion, however, that the plug-in units do not qualify as "fixtures" under our regulation since they are not "accessory to a building" within the meaning of that concept as it is used in paragraph (a)(4) of Regulation 1521. Where the units are hard wired into a system, we would regard them as "fixtures."

We have consistently taken the position that the manner of affixation is almost always determinative as to whether a particular item may qualify as a "fixture." Although we understand that the units in question have a unique address and frequency of signal generation, we are of the opinion that they may not be viewed as part of the in-place network. The measure of tax with respect to the plug-in units is thus the fair retail selling price of the units.

Very truly yours,

Gary J. Jugum
Tax Counsel