

STATE BOARD OF EQUALIZATION

OFFICE CORRESPONDENCE

150.0080

Sacramento
July 15, 1957

To: Fresno - Administrator

From: Headquarters – Sales Tax Counsel

Re: Application of Ruling 11

We are sorry your memorandum of June 28, 1956 was “buried”. This was the memorandum about the application of sales tax where a general construction contractor builds homes and prefabricates the cabinets for the home in his own cabinet shop. These cabinets are in their entirety, or nearly so, fabricated before being affixed to the realty.

As we understand the facts, the particular cabinets involved are “fixtures” as defined in Ruling 11. Therefore, where a particular customer acquires a lot from one person and then contracts with a third person construction contractor whereby the latter will build a house, including prefabricated cabinets, the construction contractor is retailing tangible personal property insofar as the cabinets are concerned.

Ruling 11, however, only applies to a construction contractor who is constructing a building on land owned by another person. Therefore, if a contractor builds and completes a house on a lot owned by him prior to the time he contracts to sell the house and lot, the cabinets would be sold as realty and Ruling 11 would not apply.

More difficult is the situation where a contractor owning a lot agrees to sell the lot and to construct a building thereon. Whether the sale of the cabinets would be as sale for realty or personalty would seemingly depend upon whether title to the lot – legal or equitable – passed to the customer prior to construction of the building.

You next inquired whether a construction contractor is regarded as making a sale of tangible personal property where, as part of an agreement of sale of a house, the house is furnished by the contractor with refrigerators, stoves, washers, dryer, etc., which are not built-in.

In our opinion, where the construction is a lump-sum contract, the contractor is a retailer of these items and the taxable gross receipts would be the fair retail sale price which would include a reasonable mark-up on cost.

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It may be possible for you to determine from the contractors how much would be discounted from the lump-sum price if the appliances were not included, but in any event it would be necessary to determine the fair retail sale price by some reasonable method.

W. W. Mangels

WWM:rc