

**M e m o r a n d u m****150.0340**

To: Out-of-State – Auditing (RLH)

October 14, 1969

From: Tax Counsel (JKM) - Headquarters

Subject: P--- N--- - G---  
XXXX East XXth  
--- ---, CA

SR -- XX-XXXXXXX

This is in reply to your memorandum dated August 4, 1969, in which you request our opinion as to the taxability of the sale of machinery and equipment in place by The C--- P---, Inc. (C---) to The D--- P---, Inc. (P---).

By lease dated September 2, 1952, C--- leased premises in ---, California, from The O--- L--- I--- Company for the purpose of carrying on therein a printing, binding, engraving, lithographing, electrotyping, publishing and rotogravure business. The lease was for a term beginning September 15, 1952, to January 14, 1986. Article 12 provided, in part:

“12.01. Lessee shall have the right to place or install in said premises such trade fixtures and equipment...as it shall deem desirable for the conduct of the business...with the right to remove said trade fixtures and equipment upon or before the expiration of the lease... .

“12.02 All alterations, additions and improvements...except trade fixtures and equipment placed or installed by Lessee as provided in paragraph 12.01...shall be deemed a part of the realty... .”

Thereafter, by agreement dated July 24, 1968, C--- agreed, among other things, to sell its assets located at the leased premises and to assign its entire interest in the leasehold to P---. O---, as lessor of the premises, consented to the assignment of the lease to P---, and acknowledged P--- as the owner of the leasehold estate under the lease with all rights of the lessee thereunder by agreement dated August 9, 1968.

An agreement by the seller and buyer of affixed equipment with the lessor of the property to which the equipment is affixed that the equipment is to be regarded as personalty which the

buyer may remove results in the classification of the equipment as personal property and not real property for purposes of the Sales and Use Tax Law. Gross receipts from the retail sale of such equipment are subject to sales tax (Standard Oil Co. v. State Board of Equalization, 232 Cal.App.2d 91). Such is the case here. By Article 12.02 of the C--- - O--- lease, trade fixtures and equipment installed by C--- were not deemed to be part of the realty. As personalty, Article 12.01 permitted C--- to remove any trade fixtures and equipment which it installed on the lease premises. As a result of the assignment of the lease from C--- to P---, together with the consent of O---, P--- became entitled to all the rights which C--- had thereunder, including the provisions of Article 12. Thus, we would regard the gross receipts from the sale of the machinery and equipment in place as taxable.

JKM:smb

cc: --- --- District – District Administrator  
--- – Subdistrict Administrator