

M e m o r a n d u m**150.0560**

To: San Mateo – Subdistrict Administrator

Date: August 9, 1968

From: Tax Counsel (TPP:GJJ) - Headquarters

Subject: Swimming Pools – above ground level

In your memorandum of July 19, 1968, you inquire as to whether sales of prefabricated aluminum swimming pools to be installed by the seller above ground on a base of sand are to be taxed as improvements to realty. Specifically, you refer to pools manufactured by the Aluminum Pool Company of America which are made of aluminum, vinyl and redwood and which are four feet deep and come in sizes from twelve feet by twenty feet to sixteen feet by thirty-two feet.

For a person engaged in the selling and the erecting of such pools to qualify as a contractor under ruling 11, he must be engaged in improving real property. Construction contracts for the improvement of real property include contracts “for erecting...structures on land.” Whether a particular item of property is a “structure” and, therefore, is not “tangible personal property” within the meaning of that term as used in the Revenue and Taxation Code is a question of fact. The factors to be considered in determining whether an item of property qualifies as a structure include the intentions of the parties as manifested by their actions and their agreements, the type of use to which the property will be put, and the method of attachment to the realty or the property in relation to its size. No one factor alone is determinative, but all of the factors must be considered together.

Based upon the information supplied in your memorandum and upon the application of the general rules as to the classification of property and upon an examination of our past rulings, it is our conclusion that the pools in question lack the characteristics or immovability and permanency of attachment normally associated with improvements to realty.

We have come to this conclusion on the basis of the following facts:

1. The manufacturer considers the pools to be personalty because they are subject to repossession.
2. The pools may be moved with relative ease and without being damaged.
3. The pools are not affixed to the land but rest in place only by the force of gravity.

Sales of these pools by the distributor are, therefore, sales of tangible personal property at retail and are to be taxed accordingly. The price received for on-site assembly and fabrication labor is includible in gross receipts, although the price received for labor or services used in installing the pools is not so includible.

GJJ:ab

cc: San Francisco - District Administrator