

M e m o r a n d u m**190.1595**

To: Inglewood – Auditing (ECM)

Date: January 20, 1978

From: Legal (MHH)

Subject: A--- Corporation
Classification of Framework
For Freeway Signs

SS -- XX XXXXXX

Your letter of October 14, 1977, poses the question: Are the bridge-mounted signs manufactured by the taxpayer taxable as materials, or fixtures?

Although the items involved are called “signs” in the trade, they are in fact merely mountings or frameworks for metal signs supplied by the State of California. Taxpayer manufactures the framework, attaches the State’s freeway sign to it, and connects the unit to a freeway bridge by means of anchor bolts already emplaced on the bridge. The metal “sign” totally covers the framework.

Taxpayer has regarded the frameworks as materials consumed in performing construction contracts. You believe further consideration may be warranted in light of Annotations 190.1680, 190.2200, and 190.2260.

Annotation 190.1680, dated 7/28/53, states that traffic signals are “fixtures” and the installer is the retailer; that wires, conduit, and poles are materials. None of these items is here involved, so we find this annotation inapplicable to the question raised.

Annotations 190.2200 and 190.2260 refer to a single transaction (letter) under date of 9/17/52. Annotation 190.2200 contains an obvious punctuation fault which obscures the meaning somewhat. Further, the phrase “signs are ordinarily regarded as fixtures,” which appears in both annotations, does not appear in the letter on which the annotation is based; in fact, the word “fixture” is not contained in the letter, nor is the word “materials.” The subject of the letter is traffic control signs, however, and the burden of the annotation is that the furnishing and installation of traffic control signs in place, either on a post embedded in the ground or in some other manner attached to real property (or buildings) constitutes the improving of real property,

and thus the contractor is the consumer of all of the tangible personal property used in the performance of the contract. Again, traffic control signs are not involved in the question posed, so we find the annotation(s) inapplicable.

Regulation 1521 defines “materials” to mean and include construction materials and components, and other tangible personal property incorporated into, attached to, or affixed to, real property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of the real property. The same regulation defines “fixtures” to mean items which “are accessory to a building or other structure and do not lose their identity as accessories when installed,” and designates “signs” as “fixtures.”

Based on upon these definitions, outdoor advertising signs erected upon land have been regarded as structures, and the persons erecting the sign in place have been considered to be the consumers, while signs attached to buildings have been regarded as fixtures. See Annotation 190.0560, and an opinion letter dated April 19, 1977 by Mr. Glenn L. Rigby.

The question here is whether the framework for a bridge sign, to which the manufacturer of the framework attaches a sign manufactured by another and then attaches the unit to a bridge, should be regarded the same as a sign which is manufactured totally by a manufacturer (contractor) and attached to a bridge, i.e., as a fixture.

Certain items are easily classifiable as either materials or fixtures by virtue of inherent physical properties, and thus are listed as typical examples in the appendices to Regulation 1521. Other items, such as the framework in question, are less easy to classify because they bear resemblance to both materials and fixtures. In such cases a determination must be made based on whether it is more like one category than the other. This determination in turn must be made after taking into account certain guidelines which over the years have become part of the classification process.

Some of the guidelines are:

- (1) Method of attachment or incorporation into real property; i.e., is it an integral part of the building or structure? On the basis that shutters were not such an integral part, they were held to be fixtures in Annotation 190.2180.
- (2) Intended use, or function of the item: On the basis that movable shutters were intended to furnish shade only, rather than to serve as a door, window, or partition, they were held to be fixtures in the same annotation.
- (3) Location of the item, whether on land or on a building: Outdoor advertising signs on land only have been held to be structures and hence

materials, while similar signs attached to buildings are held to be fixtures. Annotation 190.0560.

- (4) Place and manner of fabrication: Items constructed on the jobsite and attached piece by piece are usually held to be materials, while items constructed at a factory or at the jobsite but attached as a unit are usually held to be fixtures.

Having in mind the definitions and guidelines given above, as well as the general classification of “signs” as “fixtures,” it is reasonable to find that the framework here is not an integral part of the bridge or structure upon attachment; that its function is to support a sign rather than become a structural part of the bridge; that its location is upon a structure rather than upon the land itself; that it was constructed as a unit and attached as a unit; and that upon attachment it did not lose its identity to become an integral and inseparable part of the real property. The description and photograph indicate that the framework in question is rather an accessory to a structure and that it did not lose its identity as an accessory when installed.

It is therefore our opinion that the framework constructed by and installed by taxpayer should be classified as a fixture rather than as materials.

MHH:jw