

M e m o r a n d u m**330.3990**

To: Mr. E. V. Anderson

May 14, 1987

From: J. Kenneth McManigal

Subject: C--- S--- Co., Inc.
XXXX --- --- Avenue
---, CA XXXXX

SR -- XX XXXXXX

This is in response to your December 7, 1970 memorandum wherein you requested clarification as to the application of tax in the following circumstances:

1. Does the leasing of scaffolding purchased in an unassembled form and assembled prior to the lease thereof constitute a change in form sufficient to require the lessor to pay tax measured by rental receipts, thus precluding him from electing to pay tax measured by the purchase price of the scaffolding?

Such scaffolding is being leased in substantially the same form as acquired, and if the lessor acquired the scaffolding ex-tax, he may timely elect to pay tax measured by either the purchase price of the scaffolding or rental receipts (Cal. Tax Serv. Ann. No. 1535.55; May 13, 1969, memorandum – Tax Counsel (JKM) to Headquarters – Petition Unit).

2. When the lessor is required to pay tax measured by rental receipts, are lump-sum and/or separately stated charges for delivery, assembly, disassembly, and return of scaffolding includable in the taxable measure?

With respect to charges for delivering scaffolding, the taxability of delivery charges is determined pursuant to ruling 58. If delivery is made by a carrier from the lessor's place of business or other point from which shipment is made directly to a place specified by the lessee, tax does not apply to separately stated charges therefor. If the charges are not separately stated, tax does apply. The place where title passes (the lease commences) is immaterial except where the scaffolding is sold (leased) for a delivered price (ruling 58(a)). If delivery is made after the lease commences by facilities of the lessor from the lessor's place of business or other point from which shipment is made directly to a place specified by the lessee, tax does not apply to separately stated charges therefor. If the charges are not separately stated or if delivery is made before the lease commences, tax does apply (ruling 58(b)). (See Ann. No. 1535.36).

With respect to assembly charges, assuming that assembly of scaffolding is optional, such charges are not taxable if the lease commences prior to assembly of the scaffolding. Such charges are taxable if the lease commences subsequent to assembly of the scaffolding. In the latter instance, assembly is a service connected with the sale (lease) of the scaffolding (Ann. No. 1535.36). While separate statement of such charges is desirable, whether the charges are or are not separately stated is not determinative (§6012(c)).

With respect to disassembly charges, assuming that disassembly of scaffolding is optional, such charges are not taxable if they are separately stated (Ann. No. 1535.55).

With respect to charges for returning scaffolding, the taxability of such charges is not determined pursuant to ruling 58. Rather, such charges are taxable only if that service is made in connection with the sale (lease). We regard the service as connected with the sale (lease) if the lessee may not lease the scaffolding without paying a charge for its return. In such cases, whether charges therefor are or are not separately stated is not determinative. (See attached July 10, 1969, Memorandum – Tax Counsel (JKM) to San Diego – Auditing).

3. If the lessor purchases scaffolding frames ex-tax for resale and purchases planks and casters tax paid and then leases the scaffolding, is tax measured by the purchase price of that portion of the scaffolding acquired ex tax, by rental receipts with credit on that portion of the scaffolding acquired tax paid, or by that portion of rental receipts attributable to the portion of the scaffolding acquired ex-tax?

The lessor may timely elect to pay tax measured by the purchase price of the scaffolding frames. In this event, the scaffolding is tax paid, and tax does not apply to rental receipts. If the lessor does not timely so elect, the scaffolding is not tax paid, and tax applies to rental receipts with credit on that portion of the scaffolding acquired tax paid (see attached March 13, 1970 Memorandum – Tax Counsel (JKM) to San Jose – Auditing).

Subsequent to our receipt of your memorandum, taxpayer filed a petition for redetermination regarding the December 23, 1970 determination for the period January 1, 1967 to June 30, 1970. As taxpayer therein requested a hearing before the board as soon as possible, a preliminary hearing should be scheduled at an early date. Since a preliminary hearing will be held, we have deferred our consideration of the question of how tax applies to this taxpayer's leases of scaffolding and the inclusion of a current legal digest in the tax service.

JKM:amb
Enclosures

cc: Mr. R. Nunes
Mr. E. R. Kelley
Sacramento – Auditing
Petition Unit