State of California

Board of Equalization
Legal Division (MIC:82)

M e m o r a n d u m

190.0592

To: Mr. Ed Pedeupe
Audit Evaluation and Planning Unit

Date: February 14, 1990

From: Ronald L. Dick
Tax Counsel

Subject: Equipment versus Fixtures

Your November 30, 1989 memorandum to Tax Counsel Les Sorensen regarding the classification of property furnished and installed by C--- T---, Inc., has been referred to me for reply.

We understand that C---, Inc., contracted to furnish and install a parking system in a parking lot structure for O--- - P--- Joint Venture. C--- subcontracted the job to C--- T--- who purchased the components from G--- W--- E--- Ltd. (GWE) and other suppliers and installed the system. The components of the system which were purchased from GWE and installed consist of ticket-issuing machines; automatic payment machines, which are connected by serial data lines and voice intercom lines to a central station; and exit ticket-reading and payment units, and exit cashier units with monitoring and voice intercom facilities. According to the document you sent, titled "GWE CAPS AND PARKSCAN PARKING EQUIPMENT FOR O--- DEVELOPMENT, --- ---," C--- T--- is to also supply from sources other than GWE, rising arm barriers, vehicle detectors, parking lot "full" signs, and a pass card/season system. Given this information, you asked whether the property should be classified as fixtures.

We understand that the issue has arisen, because C--- T--- has contracted to install the system but believes that it makes a nontaxable sale of tangible personal property for resale to C---. Under Sales and Use Tax Regulation 1521, subdivision (b)(6)(A), a contractor may not take a resale certificate for the sale of materials and fixtures installed by him unless the sale is a sale of a fixture to a person, other than the owner of the realty, who will lease the fixture in place as tangible personal property under Revenue and Taxation Code section 6016.3.

In determining whether a given item of tangible personal property affixed to realty becomes a fixture of the realty or remains tangible personal property, court consider the following factors:

1. The annexation to the real property, either actual or constructive;

2. The adaptability of the item to the use for which the realty is used; and

3. The intention with which the person made the annexation. (San Diego Trust and Savings Bank v. San Diego (1940) 16 Cal.2d 142, 149.)

In a recent case, Crocker National Bank v. City and County of San Francisco, (1989) 49 Cal.3d 881, the California Supreme Court reduced the test, for purposes of taxation, to whether a reasonable person would consider the item in question to be a permanent part of the host real property, taking into account annexation, adaptation, and other objective manifestations of permanence.

For instance, in Southern California Telephone Company v. State Board of Equalization (1938) 12 Cal.2d 127, the court held that the nonattached portions of central office telephone equipment and the attached portions together constituted a unit for use together and were improvements of realty for property tax purposes. This reasoning is akin to that which resulted in the Board's including portable transmitter units furnished pursuant to a construction contract in the classification of fixtures even though the portable units are not attached in any way to the realty.

Although courts look to the method of annexation as one of the factors in determining whether an item is a fixture, more important is the adaptability of the item to the use of the realty. If tangible personal property annexed to realty has a use beneficial and necessary to the real property or to the portion to which is attached, the item is a fixture regardless of the method of attachment. (San Diego Trust and Savings Bank v. County of San Diego, supra; Los Angeles v. Klinker, supra; C. R. Fedrick Inc. v. State Board of Equalization (1988) 204 Cal.App.3d 252.)

Even though an item of tangible personal property is not attached to realty and is only resting in place, it is probably a fixture if necessary to the use of the real property. In Seatrain Terminals of California, Inc., supra, the court held that two cranes, weighing 750 tons each, which rode on tracks were real property. The cranes were essential to the operation of the container terminal where they were located. Although the cranes were held on tracks only by gravity, they were held to be fixtures because they were "a necessary, integral or working part of some other object which is attached" to the realty.

We believe the facts you present call for a conclusion that the major components of the parking system are fixtures rather than machinery and equipment. C---, Inc., contracted to furnish and install a complex network of devices to control parking in a parking garage. The annexation of the system components to the realty appears to by by conduit, data lines, and voice intercom lines. Further, we believe that, in order for the vehicle barrier arms to be effective, they must be firmly attached to the realty, although there is no mention of this fact in the information you provided.

As for adaptation, the component items are certainly necessary, integral, and working parts of the parking garage which is attached to the underlying real estate. The components were designed to be used in a parking garage, and the parking garage was designed to use the type of components in issue. (Cf. Crocker National Bank v. City and County of San Francisco, 49 Cal.3d 881, 890.) We believe that a reasonable person would consider the parking system components to be permanent pars of the host real property, which is a parking garage, just as the court found "central office" equipment installed in a telephone company's central office to be

permanent parts of the host real property in Southern Cal. Tel. Co. v. State Board of Equalization, supra, and reaffirmed in the Crocker National Bank case (49 Cal.3d 881, 892). "In each case the realty and personality are uniquely adapted to one to the other." (49 Cal.3d at p. 892.)

In summary, we agree with the position taken by your office in the November 3, 1989 memorandum to the Van Nuys District Office; that is, the contract between C--- T--- and C--- is a construction contract, and the parking system components provided under that contract are materials or fixtures.

We hope this answers your questions; however, if you need further information, feel free to write again.

RLD:sr

bc: Mr. E. L. Sorensen, Jr.