

**M e m o r a n d u m****190.0765**

To: Mr. T. P. Putnam

Date: May 24, 1976

From: John H. Murray

Subject: Regulation 1521 – Nunes Memorandum of May 20, 1976

I have reviewed the above memorandum. The problem is occasioned by the inexact language of the second paragraph of subsection (b)(6)(A). Upon reflection I recall the purpose of that language.

Under Regulation 1521 a construction contractor performing construction contracts for other than the United States is considered to be the consumer of materials and the retailer of fixtures. Under the first paragraph of subsection (b)(2)(A)2, a construction contractor in certain circumstances was considered to be the retailer of materials which he furnished and installed. The second paragraph of (b)(6)(A) was intended to recognize this exception and to treat the construction contractor as the retailer of those materials. Thus, a retailer under such contract could buy materials for resale and not report use tax on the sale price of those materials to him.

Under subsection (b)(2)(B)3, the circumstances were set out where a construction contractor would be treated as making a sale for resale of fixtures which he furnished and installed. It was intended in this instance and in this instance only that a construction contractor would be allowed to take a resale certificate for such fixtures.

From the foregoing it can be said that it was intended that a construction contractor furnishing and installing materials would be considered as consuming those materials except he would be the retailer of those materials in a [BW] situation. The contractor could not take a resale certificate for materials which he was selling under those circumstances. Similarly, a construction contractor could not take a resale certificate for fixtures which he furnished and installed except under the circumstances described in the first paragraph of subsection (b)(2)(B)3.

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Accordingly, it was not intended that a construction contractor would be allowed to take a resale certificate from the prime contractor, interior decorator, designer, department store or others for materials or fixtures which the construction contractor furnished and installed.

I am returning to you the copy of Mr. Nunes' memorandum which you sent to me.

JHM/at  
Attachment

cc: Mr. Robert Nunes