

190.1494

Memorandum

To : Mr. Bill Stallings
--- Auditing

Date: July 14, 1993

From : Elizabeth Abreu
Tax Counsel

8-454-8208
(916) 324-8208

Subject: *J--- T--- E---*
SR -- XX-XXXXXX

This is in response to your memorandum dated May 6, 1993, in which you ask whether the electrical transmission and distribution control systems furnished and installed by the above-named taxpayer are fixtures or materials. Attached to your memorandum is a letter from the taxpayer which describes the system as follows:

“The electrical transmission and distribution control systems (hereafter called control systems) are custom engineered by the client or customer for a specific site to perform a specific function. We construct Automatic Well Test Systems, Steam Quality Control systems, and Water Treatment plant systems. They are constructed from raw materials, they begin as sheet metal, wire, wire gutters, control system controllers, motor starters solenoid valves, pneumatic controllers, level switches, push buttons and temperature, pressure, flow and level transmitters. All of these materials are constructed to that they become the custom control system ordered by the client. These systems or structures electronically control the transmission of oil, water or steam. The well test facility through electrical impulses calculates the oil to water content, the flow rate, and the efficiency of the well. A steam quality system tells the equipment in the field what the quality of the steam being pumped into the well is and the rate at which it is being injected into the well. Water treatment facilities re-process the water retrieved from the well with the oil, a water treatment plant separates the oil and water and recycles the water through softeners so that it can be again turned into steam and injected back in to the well for more oil recovery. The control systems are operating the facility and not the facility operating the systems.

“Again, these are custom designed control systems to be affixed to real property. They are constructed in-house from the raw materials described above. Working off the blueprints from the engineer the control system is built to meet the specifications of the facility that it is to control. After the system has been constructed it is then transported to the specific field for which it was designed. The installation of the control system includes bolting it to a concrete foundation, bolting it to a pole or installing it in a control room or building. The place of installation is the final and permanent location of the system.

“(Note: not one of the control systems built by J--- T--- E--- has ever been moved or transferred to another location.) The control system being designed for a specific location is able to be moved to another location, but due to the complexity of the functions it performs it is not cost effective. According to client construction engineers it would be more costly to remove a control system and adapt it to a new facility or location than it would be to simply design and build a new control system for the new location. After the final affixation of the control system it is deemed a permanent improvement to real property.”

The taxpayer also sent pictures of different control systems. In two of the pictures the control systems, which appear to be complex electrical panels, are contained in cabinets. The third control system appears to be attached to a wall.

A picture tells a thousand words. The control systems will not lose their identity to become an integral and inseparable part of the real property. Rather, the control systems will be accessory to the buildings and will not lose their identity when installed. Therefore, they should be regarded as fixtures.

The taxpayer contends that section 6016.5 applies. This section reads:

“Tangible personal property--exclusion. Notwithstanding any other provision of law, 'tangible personal property,' for purposes of this part, does not include telephone and telegraph lines, electrical transmission and distribution lines, and the poles, towers, or conduit by which they are supported or in which they are contained.”

This section only applies to telephone, telegraph, electrical transmission, and distribution lines and to poles, towers, and conduit. The control systems are not lines, poles, towers, or conduit.

The taxpayer asserts that the control systems become part of the realty after they are affixed to real property and therefore the systems must be regarded as materials. However, the fact that property becomes real property after it is affixed does not mean that the property must be materials. Fixtures are often regarded as real property after being affixed to real property. See Regulation 1596. In its definitions of “materials” and “fixtures,” Regulation 1521 does not

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make a distinction between materials and fixtures on the basis of whether the property becomes real property after it is installed.

EA:cl

cc: -- - District Administrator