

**M e m o r a n d u m****190.1978**

To: Orange County Auditing

Date: August 27, 1974

From: Tax Counsel (TLH) – Headquarters

Subject: S--- Inc.  
XXXX South --- Street  
---, CA XXXXX

SR -- XX XXXXXX

Your memorandum of July 18, 1974, asked our opinion on the classification of “demountable wall panels” as fixtures or materials under Regulation 1521. You referred to an opinion of Tax Counsel, December 12, 1968, that similar panels were materials. The panels in the 1968 opinion were held in place by internally generated pressure on the floor after insertion and pressing into splines permanently installed in the ceiling. The panels in your current inquiry are held in place by internally generated pressure on both floor and ceiling, i.e., there are no splines in the ceiling.

It is our view that common to both materials and fixtures under the regulation is the requirement that they be affixed to the realty. Thus, if an item is not so affixed it is neither materials or fixtures but tangible personal property. See opinion of Tax Counsel, November 29, 1966, Ca. Tax. Serv. Anno. 190.0020.

Civil Code Section 660 defines what is affixed to land by stating a thing is deemed affixed when attached by roots, etc.; imbedded in it, as in the case of walls; or permanently resting on it, as in the case of buildings; or permanently attached to that which is permanent, as by means of cement, plaster, nails, bolts, or screws.

In applying the above to the panels in your current inquiry, it is our opinion, following consultation with Mr. T. P. Putnam, that the mere exertion of internally generated pressure on floor and ceiling does not constitute affixation, thus these panels are tangible personal property. The permanently affixed splines used in the installation of the panels in the 1968 opinion provides sufficient affixation to allow those panels to be considered materials.

Mr. J. J. Kontilis  
TLH:ph

-2-

January 12, 1990