

M e m o r a n d u m**190.2335**

To: Inglewood – Auditing (JKI)

Date: August 4, 1977

From: Tax Counsel (JHM) - Headquarters

Subject: C--- R--- and
M--- Co., Inc.

SR -- XX XXXXXX

In your memorandum of April 22, 1977, you state that you are currently auditing above taxpayer, which manufactures walk-in coolers (also called cooler boxes, freezers, or refrigeration “rooms”). Much of taxpayer’s work is as a subcontractor for the prime refrigeration contractor.

I gather that taxpayer manufactures prefabricated panels and doors which are assembled at the job location into the “rooms” or coolers. The panels lock together and the cooler can easily be assembled or disassembled at the jobsite. Presumably, the prime refrigeration contractor, or another of his subcontractors, installs the refrigeration system after taxpayer completes his work.

You refer to Mr. Hartigan’s letter of March 30, 1976, to R--- M---, Inc. (Acct. SS -- XX XXXXXX) and state that taxpayer’s “rooms” are similar to those described in that letter. For your information I enclose a photocopy of Mr. Paulson’s memorandum of May 21, 1973, to Van Nuys about similar installations by S--- Co., Inc. (Acct. SS -- XX XXXXXX). You can readily see that the conclusions reached by Mr. Paulson and by Mr. Hartigan are somewhat divergent. I understand that other refrigeration contractors wish to be treated the same as S---. I think it imperative that contractors doing the same work be accorded the same tax treatment.

For the sake of clarity I think it would be worthwhile to follow in this discussion Paulson’s three classifications:

1) These are freestanding, prefabricated, self-contained units manufactured at the manufacturer’s plant and transported as complete units to the jobsite.

These are tangible personal property (or machinery and equipment, if you prefer) and tax applies to the gross receipts from this sale at retail. If these are furnished as a part of a construction contract the measure of tax is determined under the criteria set forth in Regulation 1521(b)(2)(C).

Sales of these units to the United States are exempt from tax. The person selling those units may take a resale certificate for them from the prime contractor.

2) These are prefabricated units which do not lose their identity when installed, but which are affixed to the structure in such a manner that they become fixtures. The units, when finally installed, are fixtures under Regulation 1521 but are treated as fixtures only in the hands of the person who affixes them to the realty. In other words these rooms must be connected to the coolant system before they are fixtures.

If all the taxpayer does is take prefabricated panels to the jobsite and there assemble them into a freestanding room, the assembled room is tangible personal property in his hands and when sold by him although it is a component of a fixture when affixed to the realty by someone else. The prime contractor who is required to furnish and install the assembled refrigerated room is the retailer of the fixture. He may purchase the room from taxpayer under a resale certificate, Regulation 1521(b)(2)(B) and Regulation 1521(b)(6)(A). However, where the prime contract is with the United States the sale of the assembled room to the prime contractor is a retail sale and tax applies as set forth in Regulation 1521(b)(1)(A).

If the same person assembles the panels into the freestanding room and also affixes it to the coolant system, the room is a fixture and the measure of tax is governed by Regulation 1521(b)(2)(B) (Regulation 1521(b)(1)(A) for United States contractors.)

3) There are, as Paulson states, a combination of materials and fixtures. In our example sills are affixed to the concrete floor by nails or bolts. The panels are affixed to the sills panel by panel until the room is assembled. The sills, wall panels, roof panels, and door are materials. Consistent with Annotation 190.1980*, "Moveable and Demountable Walls," the person furnishing and installing the panels is the consumer of the panels, or if he manufactures them, the consumer of the materials from which he manufactures them.

The refrigeration units, which include the compressor and evaporator, are fixtures. Piping installed to connect the compressor with the room is materials.

The conclusions expressed above differ from those expressed by Hartigan and Paulson, but I think they are dictated by Regulation 1521 as amended effective April 1, 1976.

If you have any further questions, please let me know.

JHM/at
Enclosure

*Annot. 190.1980 was deleted in CLD 1032 and replaced by Annot. 190.1785, due to changes in Regulation 1521.

cc: Ms. Margaret H. Howard

Mr. Donald F. Brady – There appears to have been some inconsistency in our application of tax to refrigeration contractors of the type described in this memo. I think it would be well to see that this is corrected. Also, I think we should advise --- and S--- of the position take in this memo.

Mr. Philip R. Dougherty