565.0180

Memorandum

To: REDACTED TEXT Date: October 15, 1951

From: E. H. Stetson

Subject: REDACTED TEXT

In answer to your memo of August 20, we advise that whether material is to be regarded as sold to the United States or as consumed by the person furnishing the material in the performance of a construction contract with the United States depends upon the essential nature of the contract.

We do not believe that tax can be legitimately avoided by the device of splitting up what is essentially a contract to improve real property into a contract for the sale of the materials and into a contract for the installation or application of those materials. There have been cases in which the Government called for bids for materials and subsequently called for bids for their installation or application. In such a case, where the successful bidder to furnish materials was also the successful bidder for their installation or application, we recognized that the transaction was an exempt sale to the Government. This may be the type of transaction to which you refer in the fourth paragraph of your memo.

We do not know of any case in which we allowed the normal application of the tax to be avoided by the mere device of entering into two contracts instead of one where, to all intents and purposes, the overall transaction was a contract for the improvement of real property. We believe that if at the time of ordering the material it is the intention of the parties that the supplier shall also put it in place, that a contract for the improvement of real property is involved and the provisions of Section 6384 govern.

EHS:ph