

565.0260

Memorandum

To: Oakland – Auditing

Date: Jan. 29, 1969

From: Tax Counsel

Subject: REDACTED TEXT

In your memo of December 31, 1968, you ask for advice as to the correct application of the tax to a sale of a drydock floodgate, fabricated and delivered, without installation, to a contractor who will install it under a contract with the U.S. for the construction of a naval drydock.

You state that the drydock itself is a permanent installation affixed to realty and constructed with three sides. The floodgate when floated into position at the open end of the drydock, constitutes the fourth side of the structure and seals off the open end. The gate is attached to the drydock by chain and when not in use may be "floated" away.

We concur in your belief that under Sales and Use Tax Ruling 12, tax applies to the sale and delivery of the floodgate by the fabricator to the prime contractor.

Since the three sides of the drydock can be considered as realty, the question raised is whether the floodgate constitutes "machinery and equipment" so that the sale to the contractor is an exempt sale for resale to the U.S. Government, under the provisions of Ruling 12.

The requirement most pertinent in determining whether the floodgate when installed is machinery and equipment is requirement (3) of the ruling, i.e., that in order to constitute machinery and equipment, the property must be "installed for the purpose of performing a manufacturing operation or some other function not essential to the structure itself."

As I understand it, the gate initially is secured by a chain, one end of which is fastened in some manner to the drydock and the other to a winch on the gate itself, which operates to place the gate in the proper position to seal the open end of the drydock through a process of permitting water to enter compartments within the gate, thereby causing it to sink, making the drydock enclosure water tight. The gate remains in this position during the time the drydock is in use.

Under the circumstances and in view of the intended purpose of the drydock, the existence of the floodgate is essential to the drydock. Without the gate, the purpose of the drydock to provide a safe, dry working area necessary for performance of work on ships, is defeated. The floodgate constitutes the fourth side without which the drydock would be useless for the intended purpose.

Accordingly, it is concluded that the floodgate is tangible personal property sold by the fabricator to the prime contractor for use in the performance of a contract with the U.S. for the improvement of real property. The tax applies to the sales price of the floodgate to the prime contractor.

JM: smk [lb]