

M e m o r a n d u m**150.0180**

To: Marysville – Auditing (CGB)

Date: June 24, 1969

From: Tax Counsel (TPP:JM) – Headquarters

Subject: [X]

In your memorandum of April 28, 1969, you ask for an opinion as to the application of tax to the lump-sum sales by [X] of two “electric systems.”

The “electric system” consists of transmission pole lines; substations which contain large transformers mounted on concrete bases, related superstructure and fence enclosure; distribution pole lines; pole mounted transformers; service lines to residences and meters attached to the residences.

In most cases, [X] owns only an easement on the land involved and not the land itself. The land upon which some of the substations are located is owned by [Y].

It is your opinion that where no land is sold the transformers and meters would be considered fixtures and taxable – the rest exempt. Where the sale also includes the land, the transformers would be exempt also.

[X] considers the transaction as the sale of a “system” and exempt as real property, and that individual items cannot be extracted from the system as personalty.

Section 6016.5, effective September 17, 1965, provides that, “tangible personal property” 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.

Because of the exemption granted in 6016.5, we are of the opinion that the sale in place of an existing electrical transmission and distribution system constitutes a sale of real property to which the tax does not apply. Individual items of property which are attached to the realty and become an integral part of the transmission and distribution system, such as the pole mounted transformers and the meters may not be segregated and classified as tangible personal property.

With regard to the transformers located in the substations, we previously have ruled that a substation and its distribution facilities which are affixed to realty so as to constitute improvements cannot be considered tangible personal property and the transfer of such facilities would not be subject to sales tax. (Cal. Tax Serv. Anno. 1865.55 (12-9-65).)

In your memorandum it is stated that [X] in some instances owns the land upon which the substation is located but in most cases does not own any of the land, and is merely using it under an easement.

According to the provisions of section 9(b) of the agreement of transfer attached to you memorandum, [X] sells and transfers to the district, “all easements, right of ways, interests in real property,” etc. It appears that all owned substation land as well as easement interests are transferred. In other words it does not appear that [X] retains any interest in the lands upon which the system is located.

We do not believe that in the case of the sale of an electrical transmission and distribution system a distinction can be made in the character of the property on the basis of whether or not the land is sold as opposed to the sale of the easement rights by [X]. Even though [X] did not own the land in fee, it did own the easement or right-of-way interest in the land. An easement does not constitute a lease and engenders different legal consequences than does a lease. The facilities therefore, are not located on “leased” land. The concept of taxability based on the “right of removal” is inapplicable under these circumstances in the same manner as if the purchaser purchased the substation lands in fee from [X].

You ask our opinion on the occasional sale status of the sale of two electric systems in a twelve-month period. Since we consider the sale of the electrical transmission and distribution system as a sale of real property, and not a sale of tangible personal property the occasional sale concept has no application. However, any unaffixed personal property sold by [X] such as, poles, transformers, tools and equipment are subject to the tax if sufficient sales of such property are made within a twelve-month period. This requirement appears to be satisfied since [X] does have a seller’s permit and has made and reported sales, as stated in your memo, of individual poles, transformers, electric cable, etc.

JM:smb