

M e m o r a n d u m**150.0540**

To: Mr. L. H. Wilson

Sacramento
April 11, 1950

From: R. G. Hamlin

Subject: Excavation and Removal of Gravel

You have requested a copy of Attorney General's Opinion NS-3526, dated May 19, 1941, and have inquired with respect to the application of the tax to sales of rock, sand and gravel.

It is our opinion that the sale of rock, sand and gravel at retail is subject to the tax. Thus, if rock, sand or gravel is removed from the ground and sold at retail, the tax applies.

As indicated by the above opinion of the Attorney General, however, the sale of rock, sand or gravel in place does not constitute the sale of tangible personal property. Therefore, where the owner of the land grants a right to another to remove rock, sand or gravel from the ground, the transaction does not constitute a sale of tangible personal property and is not subject to the sales tax.

As rock, sand and gravel are "materials," the tax does not apply if a contractor removes such "materials" from the land and used them in fulfilling a construction contract. This is for the reason that in such case there is no sale of tangible personal property involved.

On the other hand, the tax will apply if the "materials" are removed by the owner of the property, or other person having the right of removal, and are sold to the contractor.

We are enclosing a copy of Attorney General's Opinion NS-3526.

RGH:HB