



**STATE BOARD OF EQUALIZATION**

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October 16, 1992

BURTON W. OLIVER  
*Executive Director*

Mr. D--- B---  
Certified Public Accountant  
P. O. Box XXXX  
--- ---, CA XXXXX

Dear Mr. B---:

This is in response to your letter dated September 18, 1992 in which you state:

"FACTS

"My client builds and repairs playgrounds for children. All contracts for both building new playgrounds and repairing old playgrounds are on a lump sum contract basis. He does not use a time and material approach to his billing.

"The playgrounds are secured to the land via concrete post foundations. These playgrounds are not portable. They become permanently attached to the realty. The concrete foundation enables decking and wood posts to support the slides, playhouses, and castle structures which are built on the playground. The client buys and installs all materials used on the job.

"Regulation 1521 states construction contractors are consumers of materials which they furnish and install in the performance of construction contracts dealing with real property.

"QUESTION

"Does the construction and repair work of playgrounds described above constitute real property construction, allowing such lump sum contracts to come under the guidance of Reg. 1521 and thereby direct the contractor to be the consumer of materials which he furnishes and installs in the performance of construction contracts?"

The transactions you describe are construction contracts. Regulation 1521 governs such contracts, but how a construction contract is taxed depends upon whether the contract is for furnishing and installing materials, fixtures, or machinery and equipment.

It is our position that playground equipment which becomes a permanent improvement to parks and recreation areas is materials. With respect to prefabricated playground equipment commonly sold ready for installation, we apply the rules applicable to prefabricated cabinets under Regulation 1521(c)(2). These rules provide that a cabinet will be considered a fixture if 90 percent of the total direct cost of labor and material in fabricating and installing the cabinet is incurred prior to affixation to the realty. Otherwise, the cabinets are treated as materials. Application of tax to fixtures is set forth in Regulation 1521(b)(2)(B).

We are not certain, but it appears from your description that the playgrounds your client installs are materials since the playgrounds are apparently large, massive structures permanently attached to the land rather than prefabricated playground equipment commonly sold ready for installation. If this assumption is correct, your client's transaction are construction contracts to furnish and install materials, and application of tax is governed by Regulation 1521(b)(2)(A). If this assumption is incorrect, the cabinet rule applies and if, under that rule, the playground equipment is a fixture, application of tax is governed by Regulation 1521(b)(2)(B).

Revenue and Taxation Code section 6596 provides the only basis for relief from tax if a taxpayer relies on incorrect written advice from the board. The primary conditions to qualify are that the request for opinion must be in writing and must disclose all relevant facts, including the identity of the taxpayer. Since you have not identified your client, this opinion does not come within the provisions of section 6596 but rather is simply general advice regarding a set of hypothetical facts.

If you have further questions regarding Sales and Use Tax Law, please do not hesitate to write again.

Sincerely,

Elizabeth Abreu  
Tax Counsel

EA:cl