

M e m o r a n d u m**190.1230**

To : Mr. Jack Infranca
Van Nuys District Principal Auditor

Date : August 2, 1990

From : Donald J. Hennessy
Senior Tax Counsel

Subject : G--- S--- S--- -- SR -- XX-XXXXXX

Your memo of June 6, 1990 to Principal Tax Auditor Glenn Bystrom was referred to me for reply. G--- S--- S--- (G---) furnishes and install aluminum security shutters. These shutters are imported from Europe as pieces, assembled, and cut to size by G--- per measurements provided by G--- employees or independent installing contractors. You enclosed brochures with pictures of the installed shutters of G---, as well as of the A--- Company of Germany. You ask whether these security shutters are "materials" or "fixtures" within Regulation 1521. You point out that Annotations 190.1820, 190.1860, 190.2330, and 190.2400 state that similar items, i.e., jalousies, koolshade screens, vertical blinds, window frames, and window screens, are "materials," whereas Annotation 190.2180 states that "moveable shutters, serving as venetian blinds or shades, rather than as doors, windows, or partitions, are considered fixtures."

We note from the G--- brochure that the rolling aluminum shutters in question are used as both window and door coverings. G---'s security shutters are available in four types of operations: strap, strap crank, crank, and electric. The electric type is powered by an electric motor.

The last time the Board staff tangled with a window and door covering issue similar to this, four years passed from audit to notice of determination (W--- S--- F--- (W--), SS -- XX-XXXXXX). In the hope of avoiding such delay this time, we briefly will state what happened last time around in W---. W--- furnished and installed protective wrought iron, window guards, gates, and doors. The field auditor considered W--- the consumer of all materials going into the guards, gates, and doors. W--- had previously considered all guards, gates, and doors to be "fixtures" and had been collecting sales tax reimbursement on sales thereof which, in the auditor's view, resulted in excess tax reimbursement. W--- petitioned the audit. The hearing officer decided that the gates and doors were "materials" (Appendix A, Regulation 1521), but that the window gratings were "fixtures", primarily because the window gratings were similar to awnings or venetian blinds, which Appendix B of Regulation 1521 classified as fixtures. A Board hearing was held and the petition taken under consideration and referred back to the staff for further study. As a result of such study, the staff recommendation,

as stated in the hearing officer's report, was changed to classify the window gratings as materials. This change of position was on the basis that there just wasn't sufficient rationale for treating the window gratings differently than the gates and doors. W--- was granted another hearing before the Board. The Board upheld the revised staff position and redetermined the tax with W--- as the consumer of all wrought iron going into gratings, gates, or doors.

With one exception, to be discussed below, we believe the same result should be reached here, i.e., G---'s aluminum security shutters are "materials," of which G---, or other installing contractors, are the consumers. When the aluminum shutters are installed as doors, it is quite clear (appendix A of Regulation 1521) that they are materials, as were the wrought iron doors in W---. As your memo states, the only worrisome annotation in considering G---'s shutters as materials when installed in window openings is Annotation 190.2180, quoted above; but the precise wording of the 1955 backup letter to such annotation by Tax Counsel Ed Stetson is instructive. The complete backup letter states:

"Answering your memo of April 21, I believe there would be a distinction if the movable shutters, rather than serving as doors, windows, or partitions, merely served as venetian blinds or shades.

"The function of the item is frequently important in determining its status as materials or fixtures, as well as its method of attachment. Thus, insofar as the shutters in question serve no function other than venetian blinds and are no more an integral part of the building than a venetian blind, it would be our position that they are fixtures."

The aluminum security shutters now in question do serve a function other than as venetian blinds or shades. Venetian blinds or shades only deflect light. The aluminum shutters herein have a function in addition to deflecting light in that they are important security devices. They completely close off the window openings, giving protection against vandalism and burglary. The pictures of the installed security shutters in the brochures reveal that they are far more "...architecturally and functionally integrated with the building to which they are attached..." in the words of Annotation 190.1860 on Koolshade Screens, than are awnings or venetian blinds. Applying the test of Annotation 190.2180, we believe these aluminum security shutters serve a function more analogous to "doors, windows, or partitions" than do "venetian blinds or shades." We, therefore, conclude that, with one exception, G---'s aluminum security shutters should be classified entirely as materials within Regulation 1521 on Construction Contractors.

The one exception here would be as to the security shutters of the electric type. The G--- brochure describes these types of shutters as having an electric motor. We believe that such electric motor must be considered a "fixture" within Regulation 1521. This, in all likelihood, will not change the measure of tax, if G--- purchases the motor in a completed condition, and

G---'s contract does not state the sales price of the motor, since in such case the cost price to G--- would be determined to be the sales price of the motor to G--- within Regulation 1521(b)(2)(B)(2)(b).

If you have further questions on this matter, feel free to write us.

DJH:jb

cc: Mr. Glenn Bystrom – with brochures