

**M e m o r a n d u m****190.1305**

To: Mr. Donald F. Brady

Date: September 28, 1978

From: T. P. Putnam

Subject: Cabinet Contracts

I note that the proposed operations memo on the above subject concludes with the statement that it will become obsolete when the information is incorporated into an annotation. I will make an annotation (CLD) based on this memo to you. Since the CLD will be circulated to the districts next week and will be published in due course, you may consider it unnecessary to issue the operations memo.

In accordance with our earlier discussions and based on the language in the proposed operations memo, which reflects those discussions, the following examples will illustrate various lump-sum contractual situations with respect to cabinets and the application of sales tax in accord with Regulation 1521(c)(2).

- I. Contractor "A" contracts with a property owner to furnish and install a cabinet with a formica-topped work area. Contractor "A" builds the cabinet so that it is a unit, except that the formica top is not attached before affixation of the cabinet to the realty by Contractor "A". The formica top is installed after the rest of the cabinet has been affixed to realty. The direct costs of "A" on this job are:

	<u>Material</u>	<u>Fabrication Labor</u>	<u>Installation Labor</u>	<u>Total</u>
Cabinet	\$500	\$600	\$100	\$1,200
Top	<u>200</u>	<u>50</u>	<u>80</u>	<u>330</u>
Total	<u>\$700</u>	<u>\$650</u>	<u>\$180</u>	<u>\$1,530</u>

Calculation:  $\frac{700 + 650}{1,530} = 88.2\%$

Since less than 90% of the direct cost of labor and material in fabricating and installing the cabinet is incurred prior to affixation to the realty, Contractor "A" is the consumer of materials on this job. No prefabricated cabinet is involved.

- II. Contractor "A" contracts with a property owner to furnish and install a cabinet with a formica-topped work area.

Contractor "A" builds the cabinet so that it is a unit, except that the formica top is not attached before affixation of the cabinet to realty by "A". He contracts with subcontractor "B" to furnish and install the formica top on the already affixed remainder of the cabinet. He bills "A" \$360 for the furnish and install job. In this situation, contractor "A's" direct costs (the subcontractor's billing for the top excluded) are :

	<u>Material</u>	<u>Fabrication Labor</u>	<u>Installation Labor</u>	<u>Total</u>
Cabinet	\$500	\$600	\$100	\$1,200

Calculation:  $\frac{500 + 600}{1,200} = 91.7\%$

"A" is the retailer of a prefabricated fixture. "B" is the consumer of materials, since he installed the formica top on real property.

- III. Contractor "A" contracts with a property owner to furnish and install a cabinet with a formica-topped work area. Contractor "A" enters into a contract with "B" whereby "B" will furnish and install the cabinet unit except for the formica top.

Contractor "A" enters into a contract with "C" whereby "C" will furnish the formica top and install it on the cabinet after "B" has affixed the rest of the cabinet to realty.

The direct costs of "A" on this job are not of any significance in this situation.

The direct costs of "B" are:

	<u>Material</u>	<u>Fabrication Labor</u>	<u>Installation Labor</u>	<u>Total</u>
"B"	\$500	\$600	\$100	\$1,200

Calculation:  $\frac{500 + 600}{1,200} = 91.7\%$

In this case, "B" has furnished and installed a prefabricated fixture, since, at least 90% of his direct cost of labor and material in fabricating and installing the cabinet is incurred prior to affixation to realty.

In this case, "C" is the consumer of materials since he installed the formica top on real property.

TPP:po