

M e m o r a n d u m**190.1960**

To: San Jose – District Principal Auditor

May 17, 1967

From: Tax Counsel (EDM) - Headquarters

Subject: G--- S--- G---
Dbas S--- G--- Ceramics
P. O. Box XXXX
---, California XXXXX

SR --- XX XXXXXX

We regret our delay in replying to your memoranda of March 31, 1967, and April 27, 1967, in which you ask our opinion on whether certain mosaic tile murals should be considered as fixtures or materials when furnished and installed under a lumpsum construction contract.

It is our understanding that the above named taxpayer purchases certain tile which he uses in fabricating a mosaic tile mural. The mosaic picture is made by inlaying small pieces of tile together in grouped patterns. The tile is processed and delicately colored by the taxpayer, Mr. S--- G---. The mural (colored tile picture) is enclosed by an iron frame. It is then securely attached to the wall of a building by bolts. No bolt holes are made through pictures of figures or other important items. The mosaic is unfinished as to the openings for the bolts, which are inserted into the wall through these openings. After the picture is fastened to the wall, the bolt holes cannot be seen since they are covered over with cement and inlaid with specially prepared tile. By using this special type tile, the smooth flow of the picture is not interrupted.

The taxpayer claims that although he has not as yet had to remove a picture from a wall, to do so would destroy not only the value of the picture, but also the flow of colored tile, which would have to be replaced to repair the bolt holes. He also claims that the matching of tile colors for this purpose would be insurmountable.

If the taxpayer created the art item (mosaic tile mural) by applying the small items of tile piece by piece to a wall or other part of the building, or by painting or drawing it upon the wall so that it becomes an integral or inseparable part of the building, he would be the consumer of the materials used, and tax would apply to the cost of his materials.

On the other hand, if the taxpayer creates the complete art item and then attaches it to a wall or other part of the building by means of bolts in a manner not making it an integral or inseparable part of the building, we believe that the taxpayer is a retailer of his finished art work. Inasmuch as the completed product does not lose its identity as an item of property accessory to the wall of the building, it becomes a “fixture” upon emplacement.

The latter view appears to be an accurate description of the subject taxpayer’s business activity. Accordingly, we are of the opinion that the taxpayer is a retailer of the completed mosaic tile murals (i.e., “fixtures”) which it furnishes and installs under lump-sum construction contracts. (See sales and use tax ruling 11(c).)

EDM:cb