

**M e m o r a n d u m****610.0680**

To: Audit Evaluation and Planning Unit

Date: April 9, 1985

From: E. Leslie Sorensen, Jr.  
Tax Counsel

Subject: M--- B--- A---

SR -- XX-XXXXXX

This is in response to your memorandum of March 15, 1985 to Gary Jugum concerning the classification and tax status of two fiberglass life size model whales to be furnished and installed by the subject taxpayer for a museum. The museum, we understand, does not charge for admittance to its main location but will be making a nominal charge at the site where the whales will be exhibited.

We have reviewed the contract and other documents you provided pertaining to the transaction in question and have concluded that the models are fixtures and the contract to furnish and install them is a lump sum construction contract pursuant to Regulation 1521. It follows, the taxpayer is a retailer of the models and tax would normally apply as indicated in subdivision (b)(2)(B) of the regulation. However, if the models qualify as "works of art" sold to a "museum" within the meanings of those terms as defined in Revenue and Taxation Code Section 6365, their sale would be exempt.

I discussed the matter with Mr. Jugum and it is our conclusion that the models in question qualify as "works of art" under the statute. Assuming the "museum" in question meets the definitional criteria set out in the statute, then, the sale is exempt. We note that, although a nominal charge will be made to view the models, subdivision (d)(1) of the statute would still apparently not disqualify this transaction from exempt status since our understanding is that the majority of the museum's space is open to the public free of charge.

ELS:rar