

M e m o r a n d u m**150.0385**

To: Mr. Robert Nunes

March 18, 1975

From: T. P. Putnam

Subject: Sales of Fixtures in Place

This is in response to your memorandum of February 13.

I have discovered that the conclusion that a sale of fixtures by the lessee of realty to the owner of the realty is not taxable as a sale of tangible personal property is in annotation 150.0360, dated in 1951. The theory behind the annotation is that under these circumstances, there is no constructive severance. Although some of the language in the subsequent case of *Standard Oil Co. v. State Board of Equalization*, 232 Cal. App. 2d 91, might indicate that any sale of a fixture by a lessee who has the right to remove it is taxable as a sale of tangible personal property, the language to that effect is actually dictum, since the particular facts involved a sale to a lessee who also had the right of removal, and not a sale to the lessor of the realty. The court, in fact, made some point of the circumstances of the buyer. I see no compelling reason to change the long continued practice reflected by the annotation.

Following is a summary of the application of tax to various types of transactions involving sales of fixtures:

1. Sale of fixture by lessee of realty to lessor-owner - - Not taxable unless contract of sale contemplates removal by either party.
2. Sale of fixtures by lessor-owner of realty to lessee - - Not taxable unless contract of sale contemplates removal by either party.
3. Sale of fixtures by lessee of realty to successor lessee of realty - - Taxable if both have present right of removal or if contract of sale contemplates removal by either party.

4. Sale of fixture by lessor of fixture to lessee of fixture - - Taxable as sale of tangible personal property as defined in Section 6016.3 if lessor has right to remove on breach or termination of the lease and is not the lessor of the realty. Also taxable if the contract of sale contemplates removal by either party.

TPP:lb

cc: Mr. John H. Murray
Mr. Glenn L. Rigby
Mr. Gary J. Jugum