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April 5, 1977

Mr. L--- B---
S--- M--- & A--- C---
National Association
XXXX --- Blvd., Suite XXX
--- ---, CA XXXXX

Dear Mr. B---:

SS -- XX XXXXXX

Regulation 1521, Application of tax
to food service equipment

We have reviewed the information and materials given to Mr. Hartigan. We understand that the people in your association are concerned with the application of Regulation 1521 to lump sum contracts for the furnishing and installation of restaurant equipment. The materials reviewed consist of one folder of items furnished and installed in Cocoa's/Reuben's Store No. 106, one folder of items installed in 4-Queens, and a number of blueprints of items installed in various locations. Enclosed is our summary of the classification of the items described in those materials. We suggest that you use these as guidelines for your industry. Also we discuss below the application of Regulation 1521 to lump sum contracts and include a list of items installed by members of your industry and which generally fall into each classification. For your ready reference we also enclose a copy of Regulation 1521.

Under Regulation 1521 a construction contractor is the consumer of materials that he furnishes and installs in the performance of lump sum contracts. He is the retailer of fixtures that he furnishes and installs. He is the seller of machinery and equipment.

Materials are defined as items of tangible personal property that are incorporated into, attached to, or affixed to real property by contractors in the performance of a construction contract and which, when combined with other tangible personal property lose their identity and become an integral and inseparable part of the real property.

The construction contractor may not take a resale certificate for materials that he furnishes and installs. Tax applies to the sale price of the materials to him.

The following are some items which are usually considered to be materials when furnished and installed by a construction contractor in performing a contract for the food industry.

Millwork
Wall covering materials (wallpaper; paneling, etc.)
Carpeting, including padding and trim when affixed
to the real property by glue, nails, etc.
Wall corner pieces and wall caps
Wall mirrors
Grab bars (for handicapped lavatories)
Doors
Pass window frames and shelves
Wall flashing
Ducts installed in walls, ceilings, and floors

Fixtures are defined as including items which are accessory to a building or other structure and do not lose their identity as fixtures when installed. Some items may be either fixtures or machinery and equipment depending on the manner of installation. For example, a freestanding stove which is attached to an electric outlet or gas outlet would be machinery and equipment. On the other hand, a stove which is built into a fixture or which is attached to the real property by bolts, screws, etc., will be a fixture.

When a contractor installs fixtures under a lump sum contract, tax applies to the "cost price" of the fixture. As explained in paragraph (b)(2)(B), the "cost price" is the sale price of the fixture to the contractor if he buys the fixture in its completed form. If the contractor is the manufacturer of the fixture, the cost price is deemed to be the price at which similar fixtures in similar quantities ready for installation are sold by him to other contractors.

If similar fixtures are not sold to other contractors ready for installation, the cost price shall be deemed to be the amount stated in prices lists, bid sheets, or other records of the contract. If the sale price cannot be established in the above manner, and the fixture is manufactured by the contractor, the cost price is a price computed from the elements of the cost set forth in the regulation plus a reasonable profit.

The following items furnished and installed by contractors to the food service industry are generally classified as fixtures:

Safes, imbedded in concrete in the buildings
Bold-down table bases with table tops affixed
Bold-down counter stool bases, with stools attached thereto
Lighting fixtures
Custom fabricated dishtable assemblies
Custom fabricated scullery/sink assemblies
Custom fabricated pot racks
Custom fabricated make-up tables
Custom fabricated serving counters
Custom fabricated service stands
Custom fabricated counters

Custom fabricated cash stands
Custom fabricated walk-in coolers and freezers that are affixed to the real estate,
either through a fastening to a building wall or when the walls are imbedded
or coved into the building surfaces.
Custom fabricated cocktail bars
Custom fabricated cocktail back bars
Custom fabricated cocktail back bar superstructures
Custom fabricated soffits
Custom fabricated seating assemblies/booth units
Refrigerators (remote)
Freezers (remote)
Dispensers for soap, towels, toilet tissue
Faucets
Water heaters (built into fixtures or into water systems)
Water softeners (built into fixtures or into water systems)
Plumbing fixtures
Hoods
Motors
Refrigeration compressors

Fixtures also include the following items which are built into fixtures or otherwise built into the realty and which may not be removed without damage to the items or the realty:

Rollwarmers
Dishwashers that are built into a dishtable assembly
Ovens
Ice cream cabinets
Soup warmers
Dish dispensers
Freezers
Refrigerators
Drink dispensers
Soda fountain systems
Disposals
Syrup rails
Scrap chutes
Griddles
Char-Broilers

Machinery and equipment include property intended to be used in the production, manufacturing, or processing of tangible personal property or the performance of services which are not essential to the fixed works, building, or structure itself but which incidentally may on account of its nature be attached to the realty without losing its identity as a particular piece of machinery and equipment and which, if attached, is readily removable without damage to the unit or to the realty. The contractor furnishing and installing machinery and equipment may take

a resale certificate with respect to these items from a person who intends to resell them as tangible personal property.

Tax applies to the price received for machinery and equipment as explained in paragraph (b)(2)(C).

The following is a list of items which may be generally considered to be machinery and equipment when freestanding or when they are not firmly affixed to the building or built into it or another fixture and which may be readily removed without damage to the building, the unit, or other fixture.

- Shelving units
- Safes
- File cabinets
- Chairs
- Tables
- Scales
- Bar stools
- Portable bins and tables
- Can openers
- Slicers
- Mixers
- Floor racks
- Adding machines
- Roll covers
- Hot water hoses
- Iced tea dispensers
- Silverware boxes
- Sofas with chairs
- Table lamps
- Time clocks
- Time card racks
- Lockers
- Bulletin boards
- Ice bins
- Ice making machinery
- Ranges
- Ovens
- Salamanders
- Char-Broilers
- Griddles
- Flight-type dishwashers
- Microwave ovens (freestanding)
- Ice cream cabinets
- Milk dispensers

Beverage and juice dispensers
Coffee makers
Iced tea machines
Toasters
Reach-in refrigerators (self-contained)
Reach-in freezers (self-contained)
Artifacts items
Chinaware, silverware, pots and pans, paper goods, culinary items

If you have any questions concerning this matter, Mr. Nunes and I will be happy to discuss them with you.

Very truly yours,

John H. Murray
Tax Counsel

JHM/at
Enclosures