M e m o r a n d u m   190.1090

To: San Jose – Auditing (PMS)   Date: November 1, 1974

From: Tax Counsel (GJJ/TLH)

Subject: S---   S- -- XX XXXXXX
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       In your memorandum of October 9, 1974, you asked our opinion as to the classification, as tangible personal property or as property falling within the coverage of Regulation 1521, of two items involved in installations by taxpayer. Taxpayer installs central vacuum cleaner units which have suction inlets located at various places in a building. The first item in question is the vacuum hoses which are inserted in various inlets as cleaning progresses. Taxpayer also installs electric garage door openers which are remotely controlled by transmitters located in automobiles and elsewhere, and the item in question here is the transmitters.

       It is our conclusion that both items are tangible personal property. As to the vacuum hoses, included as tangible personal property are all accessories attached to the outboard end of the hose.

       Following the opinion of Tax Counsel, November 29, 1966, Business Tax Law Guide Annotation 190.0020, it is our view that, in the absence of special circumstance not here apparent, the test for including property within the coverage of Regulation 1521 is that it be physically affixed to the land in the manner set forth in Civil Code Section 660. That section defines what is affixed to land by stating a thing is deemed affixed when attached by roots, etc.; imbedded in it, as in the case of walls; or permanently resting on it, as in the case of building; or permanently attached to that which is permanent, as by means of cement, plaster, nails, bolts, or screws.

       Here the vacuum hoses are designed to be easily inserted and removed from the suction inlets in the course of their use, and, no doubt, are laid aside in storage when not in use. Thus at no point in time are they "permanently attached to that which is permanent" as set forth in the section.

       As to transmitters in cars, the would likewise not be permanently attached to that which is permanent.

GJJ/TLH:at