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Arch Aerosol Paint Can

A company that manufactures and fills aerosol paint cans is a feepayer under the statute. Although the company claimed that it should not be classified as a distributor of architectural coatings because of the size of the can, the statute does not distinguish products based on the size or type of the container. Although a small aerosol paint can would not usually be considered for larger jobs for stationary structures, such cans are used for smaller jobs. 08/11/94.

Memorandum

To: Mr. Bob Frank
Fuel Taxes Section, Supervisor (MIC: 30)

Date: August 11, 1994

From: Stella Levy
Staff Counsel

Subject: (Redacted)

I am writing in response to your request for a legal opinion regarding whether the two above-referenced entities are feepayers under the Childhood Lead program. The substance of this memo confirms our earlier conversation.

(Redacted) manufactures both porcelain enameled and vitreous china bathroom fixtures. During the manufacturing process a "water based material" is sprayed onto the product before baking in an oven or kiln. The company did not provide enough information on this material (which presumably contains the coloring agent) to determine whether or not it should be classified as an architectural coating. We agreed that you would contact the company for more information.

(Redacted) manufactures and fills aerosol paint cans. The company contends that the size of the can should exclude it from being classified as a distributor of architectural coatings. We agreed that neither the statute nor the proposed regulations distinguishes products based on the size or type of the container. While it is undoubtedly true, as (redacted) contends, that "the aerosol paint can would never be considered for a larger job for stationary structures" it can and is used for smaller jobs for stationary structures. Therefore, (redacted) is a feepayer under the statute. The company's second contention is that it has never used lead in its products. If this is the case, (redacted) may be entitled to an exemption from the fee. We agreed that you would refer the claim for exemption to DHS.

As I told you, I discussed this entire matter with DHS attorney Diane Ewing. I briefed her on our meeting in Oakland and general matters about the program of which she was unaware. I also told her what we proposed with respect to (redacted) and (redacted). She has asked that we keep her apprised of any decisions we make. You will probably want to copy her on your letter to (redacted).

Please call me when you get more information from (redacted) and let me know whether you think that they should be feepayers.

Mr. Bob Frank
August 11, 1994
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SCL:es

Cc: Mr. Ed King (MIC: 33)
Ms. Janet Vining

Memorandum

To: Ms. Janet Vining, Senior Staff Counsel
Legal Division

Date: March 15, 1993

From: Mr. Ed King, Chief
Fuel Taxes Division

Subject: Clarification of the definition of "Architectural Coating" as related to the
Childhood Lead Poisoning Prevention Program

As discussed in our meeting on March 11, 1993, there appears to be inconsistency of interpretation between Health Services and Fuel Taxes personnel regarding the definition of "architectural coating".

Under the California Code of Regulations, Chapter 6, Article 3, Section 33001, the Department of Health Services (DHS) defines "architectural coating" as:

any product which is used as, or usable as, a coating applied to the interior or exterior surfaces of stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs. Architectural coatings include but are not limited to: ordinary house and trim paints, industrial maintenance coatings, primers, undercoaters, and traffic coatings.

However, on page 11 of the Statement of Reasons (DHS), the definition of "architectural coating" appears to be modified as follows:

. . . This definition does not include varnishes, lacquers, varnishes, concrete curing compounds, waterproof sealers, stains, or roof coatings, which have not generally contained significant amounts of lead.

Because the modification shown in the Statement of Reasons is not included in the regulation, we believe it has no impact on the definition of "architectural coating". If, however, DHS's intention is to narrow the definition with the modification, the modification should be included in the regulation.

We request that you contact the Department and advise us if you agree with our interpretation or whether we should somehow adopt the position of the Department as reflected in the Statement of Reasons. We will contact the Department's program staff regarding our findings.

Ms. J. Vining

Please let me know your opinion as soon as possible.

EWK:rm

Cc: Ms. Stella Levy
Mr. Robert Frank/
Mr. James Black

March 1994

Mr. Martin Miranda
Sr. Tax Representative
State Board of Equalization
MIC: 30
P.O. Box 942754
Sacramento, CA 94291-2754

Re: (Redacted)

Dear Sir:

I am writing as you requested when we recently spoke regarding the filing of a childhood lead poisoning fee return. As I explained, (redacted) is a manufacturer of both porcelain enameled and vitreous china bathroom fixtures. The porcelain enameled fixtures are primarily bathtubs and lavatories. The vitreous china products are toilets, tanks and lavatories. In the course of manufacturing both of these product lines, we spray a water based material onto the basic shape prior to processing the products through either an oven or a kiln.

You have indicated that the childhood lead poisoning prevention fee for architectural coating distributors does not apply to our manufacturing process. On that basis, we will not be submitting a fee return at this time. Please furnish, for our records, a written statement to the effect that this fee does not apply to our operations.

If you have further questions regarding our manufacturing processes, do not hesitate to call on me. Thank you for your time and assistance.

Sincerely yours,

(Redacted)