

M e m o r a n d u m**225.0100**

To: Fresno – Administrator

Date: June 5, 1959

From: Headquarters – Sales Tax Counsel (BH)

Subject: [X]

This is in reply to your letter of March 25 in which you inquire concerning whether certain labor operations should be considered as fabrication labor.

An optometrist examines a patient's eyes and sends a prescription to an optical laboratory, the laboratory furnishes the blank lens and grinds them according to the prescription. The optometrist later discovers that he made an error in the prescription and sends the lens back to the laboratory for more grinding.

It is our opinion that the additional grinding constitutes fabrication labor and the charge for it is, therefore, taxable.

If the patient wore the glasses for a short period of time before deciding that they were not correct and thereafter the optometrist sent the lenses to the laboratory for additional grinding, it is our opinion that this is also fabrication labor and the charge is taxable.

After a considerable period of time a patient's vision might change, necessitating a new prescription. The optometrist has the laboratory regrind the patient's old lenses rather than starting in new with blank lenses. It is our opinion that this constitutes modification and should not be regarded as taxable fabrication labor.

A patient's vision changes and he requires new lenses, however, the patient likes the old frames and the laboratory grinds new lenses and makes a charge for installing the new lenses in the patient's old frames. It is our opinion that this is installation labor rather than fabrication labor and is, therefore, not taxable.

We note that you have proposed to set up the taxable labor charges as subject to local use tax at this permittee's place of business in conforming counties. The work was performed by [X] in [Y]. For the purposes of the use tax, the word "purchase" as defined in Section 6010 does not include fabrication labor. There is, however, a bill currently before the Legislature sponsored by this Board which would include fabrication labor in the definition of "purchase". Therefore, no local use tax can be set up on any of the taxable fabrication labor if the State sales tax should be set up against the laboratory on the taxable fabrication labor.

Bill Holden

BH:rg