M e m o r a n d u m

440.2980

To: San Jose – Auditing (RGS) January 4, 1955

From: Headquarters – Tax Counsel (BH)

Subject: P--- C--- Co.
---, California C-XXXXX

This is in reply to your letters of October 18 and December 21, 1954. The taxpayer purchases a product known as "T.D.A." from D--- and A--- C--- Company. This is added to the cement and the question arises whether it is consumed by the taxpayer or may be purchased for resale.

Your thought that this product might be taxable is based principally upon a conversation with Auditor Vogel had with a Mr. W--- who is a cost accountant, and has the title of Assistant to the Controller. Mr. W--- indicates that T.D.A. was a grinding aid and had the advantage of reducing the costly replacement of rollers utilized in the grinding process. He mentioned that the vendor also claims that T.D.A improves the quality of the finished cement.

The standard specification for portland cement approved by the American Standard Association allows the addition to cement of certain materials which have been shown to be non-harmful by tests carried on by a committee of the Association. The committee has declared as non-harmful the inclusion of T.D.A in an amount not exceeding .048% by weight, except that in Type III cement the limit is .08%.

Mr. J. M. G---, Plant Manager of the taxpayer's Cement Mill describes T.D.A. in a memo and states that its benefits are not entirely clear. However, it is thought that T.D.A. lowers the water cement ratio, thereby giving slightly better strength particularly in later ages, reduces warehouse set tendencies, thereby allowing longer periods of warehousing, adds greatly to free flowing characteristics, and may or may not add to workability of cement.

We assume that there is no question but that, except for a normal amount of loss inevitable in any manufacturing process, substantially all the T.D.A. is incorporated permanently into the finished cement. On the basis that it becomes a part of the finished product and probably has some usefulness in that finished product and is not shown definitely to be used primarily as a manufacturing aid, it is our opinion that the taxpayer is not the consumer of T.D.A. and that its purchases are for resale.

BH:ja

This is a very shaky conclusion. Since we have applied this for over 40 years, we will continue to do so, as to thisparticular product, unless we become aware that its physical presence in the end product is not what is sought by its incorporation during the manufacturing process. The proper rule is that all sales are presumed to be at retail. Thus, a manufacturer has the burden of proving property is purchased for resale and not as a manufacturing aid. I.e., the last sentence is backwards for the proper analysis. DHL 6/19/98.