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**STATE BOARD OF EQUALIZATION**

April 9, 1957

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--- X, California

Attention: S. H. E---

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Gentlemen:

In your letter of February 9 you inquire concerning the application of the California Sales and Use Tax Law to charges for heat treating customer furnished material. You present four factual situations which will be answered in the order presented.

We enclose copies of Sales and Use Tax Rulings 15 and 26. Under Ruling 26 charges for labor of repair and maintenance of tangible personal property are not subject to tax. Under Ruling 15 charges for labor for fabricating tangible personal property are subject to tax.

In your first example a customer has made a die for his own use and has had your company heat treat it for him. After trying the die he found that alterations were necessary so it was returned to you to be softened. After the customer had made the necessary alterations it was returned for a second hardening. It is our opinion that all charges included in both operations are fabrication labor and the tax applies accordingly.

In the second example a customer buys a new machine tool and puts it into service. After a period of time the tool needs refinishing. He sends the tool to your for softening after which your customer reshapes the tool. The tool is then returned to you for rehardening. It is our opinion that your heat treating is properly regarded as repair labor under Ruling 26 and is not taxable.

In your third example several customers have dies made for their tools used in thread rolling, bolt heading, forging, etc. It is their practice to have the dies for these machines reshaped at intervals. These dies may be reshaped as many as ten times. It is necessary that the dies be softened for each reshaping and later rehardened.

Repair is the restoration of property to approximately its original condition or the making of minor modifications in used property. Fabrication is the making of new property or the making of major alterations in used property so that it will be fitted for a new and different use. The alteration of a used die is taxable fabrication if the pattern cut by the altered die is substantially different from the old pattern. The alteration falls under Ruling 26 if only comparatively minor modifications are made. It appears that reshaping of the type mentioned in your letter is exempt repair labor.

In your fourth example you state that your customers have on file with you a resale certificate. We presume that the certificate is substantially in the same form prescribed by Ruling 68, copy enclosed. You specifically desire to know whether you can presume all sales to these particular customers are for resale merely on the basis of their having the resale certificate on file with you. You will note that Ruling 68 states the conditions under which the resale certificate can be accepted. Enclosed is a copy of a letter issued by the Secretary of the Board of Equalization March 29, 1957, regarding the use of resale certificates. We believe you will find this letter and Ruling 68 to be self-explanatory.

If you have further questions regarding the acceptance of resale certificates or questions regarding the application of sales tax to any transactions, feel free to inquire.

Very truly yours,

Warren W. Mangels  
Associate Tax Counsel

JDP:cl

Enclosures

cc: Oakland - Auditing