

M e m o r a n d u m**435.0840**

To: X-----

Date: January 18, 1955

From: E. H. Stetson

Subject: Application of the Tax to Fireproofing of Fabrics

Among things discussed with you on my last visit to Los Angeles I believe was the contents of a memorandum of yours dated January 9, 1950, entitled "Application of the Tax to Fireproofing of Fabrics". Whether we reached a definite conclusion or not I do not now recall, but in looking at your memo this appears to be the proper application of the tax to the situation where fireproofing is performed upon fabrics furnished by the consumer.

If the fabric is new, we think the tax is clearly applicable under Section 6006 (c) and *Banken v. State Board of Equalization*, 79 Cal. App. 2d 572. Where the fabric is used, the application of the tax would appear to depend upon whether the fireproofing was done as a repair or reconditioning operation, which is conceivable, or whether it is done with the definite intention of adding the quality of resistance to fire to property that had never had that characteristic before. In the latter situation, it would appear that the operation should be regarded as a processing as contemplated by the statute.

With respect to the fireproofing of scenery and stage curtains, we believe that the scenery probably is not real property, although this might depend upon whether it is a permanent part of the theatre or stage or whether it is scenery that is moved about and changed with each performance or more frequently. If such is the case, the same considerations would govern as set forth above. In the case of stage curtains or scenery that is part of the real property and the fireproofing is done without removing the curtains or scenery, the operation would clearly be that of improving real property. On the other hand, if the curtains or scenery are removed for the processing, then we would think that the tax applied, unless the processor under his contract also replaces the processed articles in the building, in which case he would be regarded as the consumer of the materials used.

EHS:ph