



STATE BOARD OF EQUALIZATION

October 4, 1956

Attention: REDACTED TEXT
Tax Supervisor

Gentlemen:

In reviewing your petition for redetermination it is noted that you protest the inclusion of brick and refractories as improvements to realty when used to repair and reline open hearth furnaces.

As we understand the facts, REDACTED TEXT is a large plant in which steel founding is carried on. An open hearth furnace is an integral part of the foundry building. The furnace contains refractories made of various materials including furnace brick. In the open hearth furnace, the normal operation consumes a relatively high number of brick and refractories used to line the furnace. When the charge is placed in the furnace and the flame sweeps across the charge there results chemical reactions and intense heat which are very destructive to certain areas of the furnace lining. Also, certain mechanical operations tend to shorten the life of the refractories. At any rate, a certain amount of repair is necessary after each heat. After 3000 to 6000 heat, or a campaign, the furnace is relined. Because of the regularity of the repairs and the frequency thereof, you contend the material should be classified as material used in maintenance and repair of production equipment.

You further contend that the repair work merely maintains the furnace and in fact no improvement results from this maintenance work.

You, of course, realize that in California we have a special provision of law dealing with the application of sales and use tax with respect to purchases by Federal government contractors for use in making improvements to real property. These are Section 6007.5 and 6384 of the Sales and Use Tax Law. These sections form the basis for Sales and Use Tax Ruling 12, United States Contractors, a copy of which is enclosed.

You will note in the first paragraph of Ruling 12 that either the sales tax or the use tax applies with respect to sales of tangible personal property (including materials, fixtures, supplies and equipment) to contractors with the United States for the construction of improvements on or to real property in this State.

The second paragraph provides that the tax does not apply to sales of "machinery and equipment" to contractors or subcontractors. The four conditions set forth in the ruling must apply if the property involved is to be regarded as "machinery and equipment" for purpose of Ruling 12.

It is our opinion that condition number 2 – “It either is not attached to the realty or, if attached, is readily removable as a unit (as distinguished from ‘fixtures’)” – clearly is not applicable to open hearth furnaces.

Revenue and Taxation Code, Section 105, defines improvement. “Improvement” includes (a) All buildings, structures, fixtures, and fences created on or affixed to the land, except telephone and telegraph lines.

If our understanding of the facts is correct, the linings of the open hearth furnaces are made of brick and other substances. The lining is installed in a manner similar to that used in laying up bricks in walls of buildings. It is not the trade practice nor is it economically feasible to install or remove a furnace lining as a unit.

Based upon this premise, it is our opinion that the brick and other material used in repairing the linings of open hearth furnaces are “materials” as that term is used in Ruling 12, and the tax applies accordingly.

If you do not agree with us and still desire a Board hearing, please advise us of your wishes.

Very truly yours,

Warren W. Mangels
Associate Tax Counsel

JDP:tl

Enclosure

cc: San Francisco - Compliance