

M e m o r a n d u m**570.1182**

To: Santa Barbara – Auditing (EMR)

Date: Feb. 18, 1975

From: HDQRS – Tax Counsel (GJJ)

This is in response to your memorandum of December 13, 1974. You raise a question as to the application of the tax in instances where property manufactured from materials acquired under resale certificates is tested to destruction. We have previously said that the testing to destruction of articles selected from production lines generates no use tax liability [BTLG 570.1400.]

You are of the view that in the situation which you have referred to us, taxpayer is taxable as the retailer of the items tested to destruction. You are of this view because (a) the customer has specifically requested the testing, (b) the testing was done in this state, and (c) the charge for testing was billed separately.

In view of our previous rulings with respect to production testing, we are of the opinion that taxpayer is neither the retailer nor the consumer of the items tested to destruction.

We note that if the production items which were actually delivered were sold at retail in this state, the measure of tax with respect to their sale would include the charge made for the testing in question. It would be immaterial that the charge was stated as a separate item.

Taxpayer would not be the consumer of production items tested to destruction even if the testing were performed without the specific request of the customer.

Where, following the testing to destruction of production items, a whole production lot is junked as a result of the failure of the tested items to meet quality standards, taxpayer is not the consumer of the tested items or of the junked items.

GJJ:lb