

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

315.0710

12/28/79

In the Matter of the Petition)
for Redetermination Under the)
Sales and Use Tax Law)
)
)
)
)
Petitioner)

DECISION AND RECOMMENDATION
No. ----

This matter came on regularly for hearing before Richard H. Ochsner, Hearing Officer, in Oakland, California on June 7; 1979.

Appearing for the Petitioner:

Appearing for the Board:

Mr. Bill Hitchcock, Tax Auditor II
Mr. Lawrence H. Woolslayer, District Principal Auditor

Protested Item

The petitioner has protested a sales and use tax deficiency determination issued after audit for the period 7/1/74 to 6/30/77. The protest involves the following audit item:

	<u>Measure</u>
E. Use tax on charges for reborring used pipe molds.	\$26,666

Contention of Petitioner

That the reborring of used pipe molds constituted repair or reconditioning and was not taxable fabrication labor.

Summary of Petition

The petitioner corporation operates a foundry producing cast iron pipe, pipe fittings, cookware and practice bombs. The petitioner was previously audited for the period ending ---.

In connection with its production of cast iron pipe, the petitioner acquires new steel pipe molds from the --- Pennsylvania. These flask molds are 10 feet in length and come in various sizes capable of producing cast iron pipe ranging in diameter from 1-1/2 to 8 inches. The average life of a pipe mold is 600 to 1,000 castings, after which the mold becomes so pitted that it is no longer usable.

Except in the case of the molds for the largest size pipes, the new pipe molds contain sufficient steel to permit them to be rebored once. This reboring process doubles the life of a mold and enlarges its interior dimensions, resulting in the production of a larger pipe. For example, 1-1/2 inch and 2 inch pipe molds were rebored to make 3 inch molds and 2 and 3 inch pipe molds were rebored to make 4 inch molds.

The petitioner did not report or pay use tax on the amounts it paid --- for reboring its steel pipe molds. The auditor concluded, however, that the reboring process was fabrication labor, rather than repair or reconditioning labor, and subject to use tax.

A note at the bottom of the auditor's comments on the results of the audit discussion states that an adjustment in audit Item F in the amount of \$691 should be made in the final determination. This adjustment reflects items which were shown to have been sales for resale.

The petitioner made payments On June 26th and August 4th of 1978, fully paying the asserted tax liability.

Analysis and Conclusions

Regulation 1526 states the general rule that tax applies to charges for producing or fabricating tangible personal property for a consideration for consumers who furnish the material used in the fabricating process. The regulation also defines producing or fabricating as any operation which results in the creation or production of tangible personal property. Operations which merely repair or recondition tangible personal property to refit it for the use for which it was originally produced are specifically excluded from the definition.

The question presented is whether the reboring process which extended the life of the molds and which, necessarily, also enlarged them should be considered to be the fabrication or creation of tangible personal property.

There is no simple litmus test for determining whether an activity is taxable fabrication labor. Each case must be decided upon its own facts. Although there have been a large number of prior tax counsel rulings dealing with the distinction between fabrication and repair labor in a variety of circumstances (see Business Taxes Law Guide, "Installing, Repairing, Reconditioning in General" - Annotations 315.0000, et seq., and "Producing, Fabricating and Processing Property Furnished by Consumers - General Rules" - Annotations 435.0000, et seq.), we find none which have sufficient factual similarity to be considered controlling here.

The auditor's conclusion seems to have been influenced largely by Annotation 435.0380, dated 11/5/64, which held that, while the burning, sandblasting, straightening, etc. of used pipe to restore it to its previous condition was repair labor, the welding together of two 20 foot lengths to make a 40 foot pipe was fabrication labor.

On the other hand, there have been a number of rulings which found that alteration or change in the size or capacity of a used article was not fabrication labor. The following activities have been found to constitute repair or reconditioning labor: (1) Reconditioning and adapting printing presses to smaller newsprint rolls and narrower columns (Annotation 315.0660, dated 12/22/62); (2) enlarging pleasure boat cabin to add sleeping facilities (Annotation 315.0720,

dated 2/2/51); (3) reducing length by rethreading damaged used pipe (Annotation 315.0800, dated 6/26/53); (4) conversion of used TV to larger screen size (Annotation 315.0860, dated 1/12/50); and (5) reducing rug size (Annotation 435.0180, dated 6/2/53). In each case the item was not restored to its exact original condition but it retained the same basic use.

In this case, the dies were in a completely fabricated condition when originally purchased. The pipe molds were specifically designed and purchased. The pipe molds were specifically designed and purchased with the idea of extending their life by reboring. The alternation in-size of the molds which resulted from the reboring process was not a substantial modification and their use remained essentially unchanged. Aside from the enlargement of the interior dimension, the molds were, in fact, restored to their original condition. Reboring was the only practical way of performing this restoration and it was not such a substantial change as to be considered fabrication. We conclude that the reboring process constituted repair and reconditioning labor and was not subject to tax.

Recommendation

It is recommended that the petition be granted, that the Petition Unit reduce the measure of tax by \$26,666, plus the \$691 agreed to following the audit discussion, and that an appropriate refund be made to the petitioner.

Richard H. Ochsner, Hearing Officer

12/28/79
Date