



**STATE BOARD OF EQUALIZATION**

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January 18, 1995

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*Executive Director*

**SENT BY FAX AND REGULAR MAIL**

Mr. J--- C---  
E--- & Y---  
XXX --- ---, Suite XXX  
---, CA XXXXX

Re: T---M--- Industries

Dear Mr. Caldwell:

This is in response to your letter dated December 6, 1994. Based upon your most recent letter, and the enclosed material, we understand that you represent the facts to be as follows:

1. T---M--- has never engaged in "any manufacturing activities;" which statement we interpret to include representations that (1) no contracts to build the plants have been executed, (2) no materials have been furnished or improvements installed, and (3) no equipment has been purchased; and
2. T---M--- should be "classified with [a] SIC Code of 99.99, "Nonclassifiable Establishments" or as SIC Code 87-11 "Engineering Services."

Under Section 6377 of the Revenue and Taxation Code, a qualified person must be engaging in a "new" trade or business. Under our proposed regulation, this means that a qualified person:

... must have first commenced trade or business activities in a new trade or business in this state on or after January 1, 1994. Subsection (c)(5)(A)(3) of the proposed regulation is to the same effect:

A trade or business is not a new trade or business in this state if, within the 36 months preceding the date that activities were first commenced in that trade or business in this state, either the person claiming the partial exemption, or any related person, had conducted any activities in this state in any trade or business classified under the same division of the Manual as that trade or business.<sup>1</sup>

Based upon your representations, T---M--- has never been involved in any manufacturing activities, nor in any trade or business classified under the Manufacturing Division of the SIC Code Manual. This being the case, when, at some future date, T---M--- or a wholly-owned subsidiary undertakes "new" manufacturing trade or business activities under SIC Code No. 2869, T---M--- will not then be disqualified solely by reason of subsections (c)(5)(A)(1) or (c)(5)(A)(3) of the proposed form of regulation dated December 8, 1994, due to T---M---'s prior operation of a business that was classified under the "Nonclassifiable Establishments" or "Engineering Services" sections of the SIC Code Manual.

Very truly yours,

Robert W. Lambert  
Senior Staff Counsel

RWL:plh

cc: Mr. Glenn Bystrom - MIC:43  
Mr. Gary Jugum - MIC:82  
Ms. Pat Parker - MIC:40  
Mr. Warren Astleford - MIC:85

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<sup>1</sup>See also subsections (c)(5)(A)(2) and (c)(5)(A)(4) of the proposed regulation.