

M e m o r a n d u m**435.0479.125**

To: X-----

Date: October 10, 1989

From: Stella Levy
Tax Counsel

Subject: Alteration and Repair of Dies

I am writing in response to your August 8, 1989 request for a legal opinion regarding the applicability of sales tax to certain charges for the repair and/or alteration of steel dies. As I understand the facts, you are completing an audit of X----- . This taxpayer is a manufacturer and repairer of steel rule cutting dies used to make cardboard boxes. X----- questions the applicability of sales tax to "minor changes made to the original die since the cardboard box produced by use of the die is essentially the same box made by the original die with, for example, two additional locking tabs added or two removed." You have found that "all of the changes in the dies were requested by the taxpayer's customers."

You ask two questions with respect to X----- operations.

- "1. Under what circumstances do minor changes in the original die constitute taxable alteration labor as opposed to nontaxable repair labor?"
- "2. When changes to a die consist of both alteration labor and repair labor is the entire job taxable or is the tax prorated such that only that portion of the changes attributable to taxable labor is subject to tax?"

Taxable Alteration v. Non Taxable Repair

Regulation 1526(b) provides that taxable fabrication labor does not include "operations which do not result in the creation or production of tangible personal property or which do not constitute a step in a process or series of operations resulting in the creation of tangible personal property, but which constitute merely the repair or reconditioning of tangible personal property to refit it for the use for which it was originally produced." (Emphasis added.) In applying Regulation 1526 to repair or alteration of dies, we have interpreted it to mean that any change to the die which goes only to improving the die without any change in the property produced by the die is nontaxable repair labor. However, any change to the die, even a minor change, which

results in “a new product being produced” constitutes taxable fabrication labor. (BTLG 435.0480) Thus, changes to a die such as the removal or addition of parts which cut out locking tabs are taxable because the boxes produced from the altered die will differ from the boxes produced by the die prior to alteration. Similarly, changes to a die from round-cornered tabs to square-cornered tabs or vice-versa constitute taxable fabrication labor. On the other hand, a replacement of 3/4-inch steel rules with 1/2-inch steel rules “in order to make the die work better” is nontaxable repair labor if the boxes produced by the changed die are identical to the boxes produced before the change was made. The fact that changes are made at the request of the customer is irrelevant to this analysis.

Taxable Alteration Plus Nontaxable Repair

Your memorandum refers to a March 19, 1984 memorandum from X----- which addressed a situation where a taxpayer reworked dies “commensurate with the advent of a new truck model year.” X-----’s analysis makes the point that if a die is reworked merely by rearranging or reassembling preexisting parts, then such changes constitute “a nontaxable service charge.” X----- goes on to mention that in some cases a die may both be altered or reworked and repaired or refurbished. You cite several examples of this type from the above-referenced audit.

In Example #1, five hours of labor were attributed to refurbishing the die (replacement of worn out parts) and three hours to modifying the die (removal of two locking tabs and addition of two scores). The taxpayer did not itemize the two labor charges, on the invoice. In this case, tax does not apply to the five hours of repair labor if the taxpayer provides documentation sufficient to satisfy the auditor that the proration is reasonable and reflects the work actually done. Itemization of the two labor charges on the invoice would have been the preferred for of documentation, but the auditor may accept a reasonable substitute. If the taxpayer cannot document its claim that part of the charges are nontaxable repair labor, then the entire charge is subject to sales tax.

In example #2, the die was both reconditioned and altered by the addition of ten choppers. The analysis here is the same as that for example #1.

In example #3, the taxpayer refurbished all of the dies for a major customer. Thirty-three of the dies were also altered (new vents added). In this example, there is no tax owing for the dies that were only refurbished. As to the dies which were both refurbished and altered, no tax is owing for that portion of the labor attributable to the refurbishment if the taxpayer provides adequate documentation of its claim. However, if the documentation is inadequate to support the taxpayer's claim, then the entire charge for changes to the 33 dies is subject to tax.

I hope the above analysis is helpful to you in completing the audit of X----- . Please feel free to call me if you have further questions.

SL:cl