

**STATE BOARD OF EQUALIZATION**

March 12, 1991

X-----

RE: X-----
Application of Sales Tax to Heat Treating Charges

Dear X-----,

By letter dated January 28, 1991, you requested advice from this office regarding the application of sales tax to heat treating charges. According to your letter, the facts are as follows:

“1. The name of our organization is X-----. We provide heat treating (stress relieving, annealing, normalizing, etc.) services to metal fabricators.

Typically these services are part of a fabrication process that may involve welding, machining, sand blasting, pressure testing, and painting.

“2. For example, X----- refinery in X----- may require repair of an existing pressure vessel or fabrication of a new vessel. The refinery would normally go to a fabricator-X----- Fabrication and Machine, X----- Fabrication, X----- Engineering, X----- Pipe, etc. – to have this item manufactured or reworked. The fabricator would then, in turn, at the appropriate point in the fabrication process, come to us for whatever heat treating requirement that might be involved in the fabrication process, depending on the type of metal, type of service, etc.

“3. After we perform our function, the item will then, typically, go back to the fabricator or to another second-level contractor for further processing (sand blasting, painting, testing, etc.) prior to delivery to the client--In this case X-----.”

You state that it is your assumption that your services are not taxable and that taxes due will be obtained by your client upon delivery of the finished product to X-----. You ask whether this assumption is correct.

Revenue and Taxation Code section 6051 imposes a sales tax upon all retailers measured by gross receipts upon the retail sale of tangible personal property in this state. All gross receipts from retail sales are presumed to be taxable until the contrary is established. Rev. & Tax. Code § 6091.

The important issue here is whether you are making a sale when you charge a fabricator for heat treating the metal it furnishes you. The definition of a sale under Revenue and Taxation Code section 6006(b) includes:

“The producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, processing, or imprinting.” (Emphasis added.)

In our opinion heat treating is fabricating or processing within the meaning of the law. We assume, however, that you contract directly with the fabricator who furnishes you with the metal to be treated and that the fabricator pays you for heat treating the metal. In that case, you are not heat treating the metal for the consumer. Therefore, there is no sale, and no sales tax is imposed on the amount you charge the fabricator. If, however, a consumer such as X----- pays you to heat treat metal that it furnishes you, then there is a retail sale on which you must pay sales tax unless the heat treatment is solely for the purpose of repairing the metal.

We are enclosing a copy of Regulation 1526, entitled “Producing, Fabricating and Processing Property Furnished by Consumers – General Rules.” If you need further assistance on this matter, please write to us again.

Sincerely,

Elizabeth Abreu
Tax Counsel

EA:cs/0137E

Enclosures: Regulation 1526

Bc: San Francisco District Administrator