



**STATE BOARD OF EQUALIZATION**

March 25, 1974

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This is in reply to your letter of February 19, 1974, which was addressed to Mr. Thomas P. Putnam. Your letter was referred to the undersigned for consideration.

You have requested our opinion as to the sales tax consequences of certain activities performed by X-----, all of which involve its nuclear reactor facilities at X-----, California. Specifically, our opinion is solicited as to whether these activities constitute services the charge for which is exempt from tax under Regulation 1501, or whether such activities constitute the producing, fabricating, or processing of property furnished by consumers the charge for which is taxable under Regulation 1526.

The questioned activities, all of which involve material furnished by the customer, may be grouped into four major categories as follows:

1. X----- Reactor and X----- Services

The customer brings specimens to your facility for the purpose of subjecting these specimens to specified degrees of radiation. In most cases it is clear that the customer's purpose is to determine the effect of such exposure upon the specimen. Usually the specimen is degraded or rendered totally useless as a result of its exposure to radiation. For example, a customer may submit a printed electronic circuit for exposure to determine the reliability of the circuit in the presence of nuclear bombardment.

In other cases, however, the purpose of the exposure of the specimen is to add to its value by rendering it useful for a particular purpose. For example, a particular drug or chemical may be made radioactive so that it may be used in its radioactive state for medical treatment or diagnosis.

In a few cases you do not know the customer's purpose in submitting the specimen. For example, one customer submits gem stones for radiation; and

although the radiation appears to alter their color, you do not know if any value has been added.

We are of the opinion that the application of sales tax to the transactions described is as follows:

- (a) In those cases such as the drug case cited above in which the radiation renders the material valuable for a new and different purpose, the transaction is taxable unless the customer certifies to you that the taxpayer will not be the consumer of the property. This may be accomplished by means of a resale certificate; although, technically under Revenue and Taxation Code Section 6006(b) processing done for someone who will not be the consumer of the material processed is not a "sale" and there is thus no true "sale for resale."
- (b) In those cases such as the printed circuit case tax will apply (assuming the customer will consume the materials) even though the result of the processing will be a deterioration in the value of the property unless X----- furnishes to the customer reports with respect to the effect of the radiation on the materials. That is, the transaction will be regarded as taxable processing if X----- does no more than expose the materials to radiation even though the materials themselves will be of lesser economic value as a result of the exposure. Only if X----- furnishes to the customer information with respect to the effect of the radiation on the materials will the transaction be treated as a nontaxable testing service.
- (c) In those cases such as the gem case in which X----- does no more than expose the property to radiation, the tax will apply in the absence of certification by the customer that the customer will not be the consumer of the property. Again, a resale certificate may be utilized here.

2. Dosimetry Services

In these cases the customer's material is submitted to nuclear radiation and the effect of this "dose" on various components of the material is measured. The sole purpose is to test the effect of the radiation and to furnish a report to the customer.

We are in agreement with your conclusion that these transactions constitute a nontaxable testing service.

3. Flash X-Ray Services

These services are the same as those described in item 2 above except that the purpose is to determine the effect of x-rays upon the material. The test usually results in the degradation or ultimate destruction of the material.

We are in agreement with your conclusion that this transaction also constitutes a nontaxable testing service.

4. Hot Cell Services

These services involve the handling of the customer's radioactive material using remote manipulation inside of a shielded cell and consist primarily of unpacking and repacking the material.

We are in agreement with your conclusion that these activities constitute a nontaxable service. The unpacking, moving about, and repacking of tangible personal property is not a "producing, fabricating, [or] processing" of tangible personal property within the meaning of those terms as they are used in Revenue and Taxation Code Section 6006(b).

Very truly yours,

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Tax Counsel

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Bc: X----- Dist. Admin.