

BEFORE THE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Petition for Redetermination and  
Claim for Refund under the Sales and Use Tax Law of:

Xerox Corporation  
SZ OHB 98-040852  
89002095430, 89002095400

Appearances:

For Petitioner/Claimant:

Eric J. Miethke, Attorney  
R. Charles Phillips, Manager Sales and Use Taxes  
Robert W. Gundlach, Representative

For Sales and Use Tax Department:

David Levine, Tax Counsel IV

For Appeals Section:

John Abbott, Tax Counsel IV

MEMORANDUM OPINION

This opinion considers the merits of a petition for redetermination and a claim for refund for the period April 1, 1993 through March 31, 1997. At the Board hearing, petitioner/claimant, hereinafter referred to as petitioner, protested a portion (\$453,327) of a determination. It had also paid the tax on the protested amount and filed a timely claim for refund.

Petitioner's photocopy machines used (among other things) developer to produce photocopies. Developer consisted of a combination of toner and a carrier that deposited the toner on the copies. The process required that toner remain on the copies; the carrier did not remain on the copies. Petitioner sold developer to, among other customers, copy shops that produced and sold photocopies to their customers.

The Sales and Use Tax Department assessed tax on the developer petitioner sold to copy shops because it contended that the primary purpose of the developer was for use in the photocopy process, not to become an ingredient or component part of the copy shops' photocopies. Petitioner contended that developer became an integral or component part of the finished product, the photocopies. Since the copy shops sold the copies, petitioner contended that it could accept valid resale certificates for the developer from its copy shop customers and not charge them tax reimbursement.

OPINION

To determine whether property used in manufacturing, producing or processing other items to be sold may be purchased for resale, the Board has adopted Title 18, California Code of Regulations, section 1525 (Regulation 1525). That regulation provides:

“PROPERTY USED IN MANUFACTURING.

(a) Tax applies to the sale of tangible personal property to persons who purchase it for the purpose of use in manufacturing, producing or processing tangible personal property and not for the purpose of physically incorporating it into the manufactured article to be sold. Examples of such property are machinery, tools, furniture, office equipment, and chemicals used as catalysts or otherwise to produce a chemical or physical reaction such as the production of heat or the removal of impurities.

(b) Tax does not apply to sales of tangible personal property to persons who purchase it for the purpose of incorporating it into the manufactured article to be sold, as, for example, any raw material becoming an ingredient or component part of the manufactured article.”

In Kaiser Steel Corp. v. State Board of Equalization (1979) 24 Cal.3d 188, the California Supreme Court, relying on Regulation 1525, held that the purchaser’s primary purpose for the raw materials determined the application of tax. If property is purchased primarily as an aid in the manufacturing process, it is taxable despite some portion remaining in the finished product. If property is purchased primarily to incorporate in the finished product, it may be purchased for resale, not for use.

We find that petitioner sold developer to copy shops primarily for the purpose of incorporating the toner into the finished product, the photocopies. The toner was an essential component of the photocopies. The copy shops did not use the developer primarily for the purpose of producing the photocopies. Accordingly, petitioner could accept valid sales for resale from its copy shop customers for the developer. The petition and claim for refund should be granted.

Adopted at Sacramento, California, on March 29, 2001.

Claude Parrish \_\_\_\_\_, Chairman

John Chiang \_\_\_\_\_, Member

Johan Klehs \_\_\_\_\_, Member

Dean Andal \_\_\_\_\_, Member

Marcy Jo Mandel \_\_\_\_\_, Member\*

\*For Dr. Kathleen Connell, pursuant to Government Code section 7.9.