

M e m o r a n d u m**440.1660**

To: Oakland – Auditing (JFR)

Date: April 30, 1953

From: Headquarters – Sales Tax Counsel

Subject: X-----

Soap

Confirming our telephone conversation of April 28, it is our opinion that soap used to create voids in the plaster mixture, resulting in increased insulation properties of the wallboard being manufactured, is purchased for some purpose other than resale. The soap appears to serve a purpose similar to a mold and we cannot distinguish the purpose from that performed by lace used in the manufacture of clay or porcelain figurines. The Board held that the lace was bought for a purpose other than resale. Even assuming that the soap remains in the finished product, its purpose would appear to have been entirely fulfilled by the time the plaster mixture hardens. X----- states in the petition for redetermination, "The exclusive reason for incorporating this resin soap into the core of the gypsum board products is to capture and hold air bubbles in the plaster mixture until the mixture hardens". (Underscoring added.) After that, the soap does not appear to serve any purpose.

Retorts

Upon examination of all of the data made available to us, we now view the retorts as "machinery and equipment" under Ruling 12. They are certainly used in performing a manufacturing function (manufacture of magnesium), and are not a part of, or essential to, a structure. Even regarding the furnace as a structure, the retorts are not necessary to the functioning of the furnace. They can be readily removed, and must be frequently replaced.

Sale of X----- Plants

It is our understanding that the owner of these plants is a lessee of the land, and has the right under the lease to remove the affixed machinery and equipment at any time without the necessity of obtaining permission of the lessor. Consistent with our administrative practice we think the sale of the machinery and equipment is a sale of tangible personal property. We distinguish the sale of the X----- plant by X----- Company covered by

our letter of January 11, 1950, upon the basis that at the time of the sale the seller owned the underlying realty, there being thus no separate ownership of the affixed machinery and equipment. Thus, in the hands of the seller, the affixed machinery and equipment was real property.

E. H. Stetson

EHS:ph