STATE BOARD OF EQUALIZATION

February 21, 1955

K--- A--- & C--- Corporation
XXXX ---
--- XX, California

Attention: Mr. D--- O. M---
Legal Department

Gentlemen:

Unfortunately I was unable to attend the Western Tax Administrators conference in Salt Lake City last October, but Mr. Harry L. Say, Sales Tax Administrator, did attend and I have discussed with him the third item mentioned in the next to last paragraph of your letter of February 9.

It is our opinion that the iron rods, bars, and pipes are not bought for the sole purpose of resale but are clearly purchased for another purpose, even though the iron remains in the finished product. The use of the bars and rods as electric poles to create an electric spark seems to us quite inconsistent with a conclusion that they are bought for no purpose other than resale which would be essential to exemption under the definition of a retail sale in Section 6007 of the Sales and Use Tax Law as "a sale for any purpose other than resale…"

This seems equally true in the case of pipes used to convey oxygen prior to their becoming an ingredient of the finished product. An apportionment would not seem possible because, as we understand it, all of the material is used for a purpose other than resale, even though it ultimately is resold.

The rule authorizing the use of a percentage of receipts from the sale of coke to foundries (Sales and Use Tax Ruling 17) is based upon the understanding that 55% of the coke is consumed in heat production and that the remaining 45% is not used for any purpose except as an ingredient of the finished product. Obviously such percentage could not be used to produce heat or it would be consumed. We propose, accordingly, to redetermine the tax in accordance with the conclusions reached at our hearing on October 13 as respects the items other than those previously discussed herein.

In your letter you state that the kiln used at N--- and purchased from General Services Administration undoubtedly was sold as “surplus property” in which case the use tax would be applicable.

I am turning the file over to our auditing department in order that the proposed redetermination may be prepared. We will send you the details thereof after which you can inform us whether you desire to be heard before the Board. The amount of refund will, of course, be determined by how much of the original tax measure of $XX,XXX.XX is deemed to be excessive.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:ph

cc: --- – Auditing