



STATE BOARD OF EQUALIZATION

June 6, 1975

Gentlemen:

This is in response to your letters of April 14 and May 13, 1975, which were directed to Mr. W. D. Flynn of our Santa Ana Office. As Mr. Flynn advised you, your letters were forwarded to this office for response.

As we understand the facts your company furnishes designers, draftsmen, and engineers on an hourly basis. You received a stipulated hourly fee for their services plus employment taxes, etc.

The client furnishes all of the tangible personal property except individual tools required for the job that a specific person may bring with him. The drawing or product of the work is created by the client supervising the person you furnish with the desired abilities. The work is performed at the client's place of business during normal working hours the same as any other employee of the client. The working hours would vary depending on the client's request.

Although the California sales tax may apply in instances where work is performed for a consumer even though all materials may be supplied by the consumer and the person performing the work may provide labor only, we are of the opinion that this rule would not apply in this case. [See Regulation 1526 "Producing, Fabricating and Processing Property Furnished by Consumers—General Rules," copy enclosed for your reference.]

It has been the position of this Board in the past that where a company provides only workers to an independent business, without furnishing the place of work, any supervision of the worker or any materials, tools, equipment or supplies used in performing the work, and the payment for the work is based merely on an hourly rate for the labor, the workers furnished will be considered "special employees" of the business to whom they are furnished and the furnisher will not be considered as producing, fabricating, or processing consumer furnished tangible personal property within the meaning of Section 6006(b) of the Revenue and Taxation Code. Typically we have recognized the application of this principle in the situation where a company has secured temporary help from a firm which specialized in providing such help.

In the case before us it appears that the designers, draftsmen, and engineers supplied by you to your clients work under the direction and control of the clients. Accordingly, we are of the opinion that tax will not apply to your charges to your clients. It is immaterial in this case that the designers and draftsmen may bring with them some of the tools required to perform a specific job.

Very Truly yours,

Gary J. Jugum
Tax Counsel