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Memorandum

To: Mr. L.F. Ferreira
Supervising Auditor - Oakland (CH)

Date: December 6, 1993

From: Sukhwinder K. Dhanda, Staff Counsel
Legal Division - MIC:82

Subject: **T--- - W--- INC.**
SR -- XX-XXXXXX

This is in response to your memorandum of October 6, 1993. Under the facts provided, T--- - W--- enters into optional maintenance contracts with its purchasers of the silicon wafer inspection equipment. When a part requires repairs, the purchaser sends the part to T--- - W--- which in turn sends the part to an independent Utah repairer. The refurbished part is then sent back to T--- - W---. In some cases, the part is sent out-of-state to the customer and installed by a T--- - W--- technician. In other cases the part is taken to the out-of-state site by a T--- - W--- technician. In any case, T--- - W--- installs the part on the purchaser's equipment at the out-of-state site.

As already recognized in your memorandum, T--- - W--- is the consumer of the repair parts it provides to its purchasers of the inspection equipment pursuant to the optional maintenance contracts. If any tax is owing, it would be a use tax on T--- - W---'s use of the parts in California. Revenue and Taxation Code section 6009.1 states that "use" does not include "the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state."

The "use" that T--- - W--- makes of the repair parts provided by the Utah repairer is the installation of the parts onto the purchaser's equipment. Under Section 6009.1, T--- - W---'s retention of the parts in California for the purpose of subsequently shipping the part outside

California for T--- - W---'s own use outside California is not a California "use" subject to tax. However, if T--- - W--- did not itself install the parts but instead sent the property by common carrier from California to the customer for the customer to install, then title to the part would have passed to the customer in California. In such a case, T--- - W--- would have consumed it in California and would be required to pay use tax. This is analogous to the rules applicable when a person ships extax property as a gift to a recipient outside California.

SKD:plh

cc: Oakland District Administrator - CH