



STATE BOARD OF EQUALIZATION

PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001
TELEPHONE (916) 445-6450

August 8, 1950

Attention: ---

Gentlemen:

We have reviewed your contract with ABC Company together with copies of your invoices furnished in connection therewith.

We think that this is a contract for engineering, research and development services. We do not find in the contract any requirement that a machine be manufactured and delivered to ABC Company. Furthermore, the contract provides that the contractor agrees to assign to ABC Company for its exclusive use, all engineering data, plans, specifications, etc., that may be developed by them. If the contractor retained all these data, plans, etc., as its own and merely made therefrom a machine and delivered it to the company, there would be grounds for regarding the transaction as a sale of tangible personal property. As far as the construction of a machine is concerned, this seems to be a contract providing for research to see if a certain article can be produced that will perform in a certain manner and to turn over to ABC Company all information relative thereto, with no specification as to the form or manner in which it is conveyed. It appears that a machine was actually produced but the fact that it is still being retained by the contractor for further research purposes is indicative of the fact that the transaction does not contemplate a sale of tangible personal property.

It is, therefore, our opinion that you are the consumer of the materials used in carrying out the terms of this contract and that the sales tax does not apply to your charges to ABC Company. The tax does, of course, apply to the sale of the materials to you.

Very truly yours,

R. G. Hamlin
Associate Tax Counsel

RGH:hb