

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)  
(916) 445-8485

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*Executive Secretary*

July 11, 1985

**REDACTED TEXT**

This is in response to your letters dated May 7 and June 28, 1985. You asked that we examine the four agreements which you furnished us and render our views as to how the California Sales and Use Tax Law applies with respect to them.

We understand REDACTED TEXT a California corporation, has developed a dual universal synchronous communication controller and an asynchronous communications interface as proprietary products. REDACTED TEXT has developed an advanced cathode ray tube controller as a proprietary product. Both REDACTED TEXT and REDACTED TEXT desire to have an alternate source supplier for their products and have agreed upon a series of four agreements which together enable REDACTED TEXT and REDACTED TEXT manufacture and sell the products developed by the other.

Listed below are brief descriptions of the four agreements which you provided us followed, in each case, by our opinion as to the application of the law.

**REDACTED TEXT**

This is the basic agreement whereby REDACTED TEXT and REDACTED TEXT license each other to manufacture and sell each other's products in exchange for 7 percent and 4 percent royalties. In connection with this agreement, technical information in human readable form is transmitted electronically between the parties. No tangible personal property is transferred.

**Opinion**

Since there is no transfer of tangible personal property pursuant to this agreement, neither sales nor use tax applies.

**REDACTED TEXT Tooling Agreement**

Pursuant to this agreement, REDACTED TEXT purchases, for delivery in REDACTED TEXT, semi-conductor development, design, and process materials from REDACTED TEXT. These items, which are useful to REDACTED TEXT in producing the REDACTED TEXT product, include: diagrams, design specifications, data base tapes, various drawings, test samples, wafers, masks, and a cell book. The sales price for these items is \$50,000.

Opinion

Since delivery of these items is to REDACTED TEXT in REDACTED TEXT with use thereafter exclusively in REDACTED TEXT, neither California sales nor use tax applies with respect to their acquisition or subsequent use (See Rev. & Tax. Code §§6051, 6201).

REDACTED TEXT Tooling Agreement

Pursuant to this agreement, REDACTED TEXT, related to REDACTED TEXT purchases from REDACTED TEXT for delivery in REDACTED TEXT, essentially the same types of items listed in the REDACTED TEXT Tooling Agreement above.

Opinion

Since the sale of these items occurs in REDACTED TEXT, the California Sales Tax does not apply (see Rev. & Tax. Code § 6051, Reg. 1620(a), copy enclosed). However, the use tax could apply if REDACTED TEXT utilized the items in question in California (see Rev. & Tax. Code §6201; Reg. 1620(b)). Since the facts do not indicate REDACTED TEXT will be using the items in California, we assume such use will not be made by it here and that, therefore, use tax will not apply.

REDACTED TEXT Tooling Agreement

This agreement transfers the tangible personal property acquired by REDACTED TEXT, in the REDACTED TEXT Tooling Agreement, to REDACTED TEXT. There is no mention in the agreement regarding when title passes. However, the agreement indicates delivery to REDACTED TEXT occurs at point of entry (P.O.E.) to the United States. The purchase price is \$50,000 and REDACTED TEXT intends to utilize the items in question in its California operations.

Opinion

Assuming delivery occurs at a California port, it is our view that the sale occurs at that point (see Rev. & Tax. Code §§6006(a), 6010.5; 1628(b)(3)(D)). Further, assuming that REDACTED TEXT has no offices or agents in California, the applicable tax is a use tax on REDACTED TEXT measured by the \$50,000 sales price (see Rev. & Tax. Code §§6201, 6202; Reg. 1620(b)).

Very truly yours,

E. Leslie Sorenson, Jr.  
Tax Counsel

ELS:ms  
Enclosure

cc: Mr. Donald J. Hennessy