STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-3828

WILLIAM M. BENNETT
First District, Kentfield

BRAD SHERMAN
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

MATTHEW K. FONG
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

BURTON W. OLIVER
Executive Director

June 30, 1992

Mr. REDACTED TEXT
XYZ, INC

RE: REDACTED TEXT
Taxation of Consulting Services

Dear Mr. REDACTED TEXT:

I am writing this in response to your letter to me of May 19, 1992, following up on my previous telephone conversation with REDACTED TEXT of your office. You have requested our opinion as to the application of sales tax to XYZ, INC's charges for consulting services.

Your letter sets forth two types of consulting transactions as follows:

"a. We provide consulting services to one of our customers. We do not deliver any products other than our consulting services. We bill the customer only for consulting services.

"b. We provide consulting and machine shop service to the same customer. In addition to the consulting services, we manufacture parts that are specified in the course of our consulting, and we bill the customer separately for consulting, machine shop time, and for the parts we manufacture."

OPINION

A. Sales and Use Tax Generally.

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise noted, all statutory references are to the Revenue and Taxation Code.) The definition of "gross receipts" includes the "cost of the material used, labor or service cost, interest paid, losses or any other expense." (§ 6012(a)(2).) The total amount of the sale price includes any services that are a part of the sale. (§ 6012(b)(1).)

"It shall be presumed that all gross receipts are subject to tax until the contrary is

established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale ...." (§ 6091.) The retailer owes the sales tax but may collect sales tax reimbursement from the purchaser pursuant to agreement. (Civ. Code § 1656.1.)

B. Tax Consequences to XYZ, INC.

Under the above authority, services are not subject to tax unless they are a part of the sale. As a result, we have previously determined that where solely consulting services are performed and no tangible personal property is given or produced, then the consultant's charges for his services are not subject to tax. (Annot. 515.0920. Sales and Use Tax Annotations are excerpts from previous Board staff opinion letters and serve as a guide to Staff positions.) Thus, XYZ, INC's charges for consulting only are not subject to tax.

However, pursuant to its consulting work, XYZ, INC also manufactures parts to the order of the customer. Such orders are a direct result of some of XYZ, INC's consulting work. Both the scenarios outlined apply to the same customer, but we assume that XYZ, INC also does consulting and/or consulting-+-manufacture for other customers. A "sale" includes the transfer for a consideration of tangible personal property which has been produced or fabricated to the special order of the customer. (§ 6006(f).) We have previously considered that the machining of metal is a step in a process resulting in the production or creation of tangible personal property. (Reg. 1526(b). Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.) Thus, in the second case you outline, XYZ, INC's machining operations, which result in a product made to the order of the customer, are fabrication. Under the above authority, XYZ, INC's charges for consulting and machine shop time are included in the taxable gross receipts from the sale of the parts manufactured.

Sincerely,

John L. Waid
Tax Counsel

JLW:es

bc: Oakland District Administrator