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December 7, 1993

Mr. E--- M---
M--- E---
XXXX --- ---
---, CA XXXXX

Re: Application of Sales Tax
Regulation 1526, 1546
Fabrication/Repair Labor

SR -- XX-XXXXXX

Dear Mr. M---:

This is in response to your letter dated August 6, 1993, regarding the application of tax to assembly labor performed on electronic kits.

My understanding is that your customers bring you electronic assembly kits so that you can assemble their finished product. M--- supplies some of the materials incorporated into the finished product. You purchase these materials for resale. In addition to your electronic assembly work, you also repair desktop computers and printers.

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. Although the sales tax is imposed upon the retailer, the retailer may collect sales tax reimbursement (usually itemized on the invoice as "sales tax") from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) All sales are presumed to be taxable retail sales unless the retailer in good faith takes a timely and valid resale certificate from the purchaser. (Rev. & Tax. Code § 6091, Reg. 1668, a copy of which is enclosed.)

Sale means and includes the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting. (Rev. & Tax. Code § 6006(b).) As explained in Regulation 1526, a copy of which is enclosed, tax applies to charges for producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting. Producing, fabricating, and processing include any operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property. (Reg. 1526.) This does not include charges for the repair or reconditioning of tangible personal property to restore that property to its original condition to be used for its original use. (The application of tax to repair charges is explained in Regulation 1546, a copy of which is enclosed.)

You state that M--- E--- provides assembly labor on electronic kits that are furnished by your customers. Since you are making a retail sale as explained above, your charges for such assembly are taxable. (Business Taxes Law Guide Annotation 435.0020 (7/19/50).) For example, the firing of ceramics or China furnished by consumers is regarded as a step in the production of the finished article and tax applies to the charge for such firing. (Business Taxes Law Guide Annotation 435.0860 7/21/50 and 2/19/53.) Also, charges for drilling holes in, or flattening angles, or cutting steel into desired lengths, for a customer who furnished such steel, constitutes taxable fabrication labor. (Business Taxes Law Guide Annotation 435.1580 6/2/53.) Accordingly, we regard your charges for assembling the customer furnished electronic kits as a step in the production of the finished electronic kit, and thus taxable fabrication labor.

When you perform fabrication labor, your total charges for labor and materials or parts used in producing the finished article will be included in the taxable gross receipts. These materials can be purchased for resale to the extent that they are physically incorporated into the finished article to be sold to your customers. (Reg. 1668.)

However, if you are providing labor on previously assembled, and already used electronic kits which merely restores them to their original condition for their original use, your charges are for nontaxable repair labor. (See Reg. 1546.) Thus, any labor that you perform on used desktop computers and printers, that merely restores these articles to their original condition to be used for their original use, is also nontaxable repair labor. When you sell parts as part of the repair, your charge for the parts is subject to tax as explained in Regulation 1546.

Mr. E--- M---
SR -- XX-XXXXXX

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December 7, 1993
435.0038

If you have further questions, feel free to write again.

Sincerely,

Gerald Morrow
Tax Counsel

GM/md

Enclosures: Regulations 1526, 1546, and 1668

cc: Mr. B. H. Watson, Supervisor
Michelle L. Sommer, Business Tax Representative
Return Review Section - MIC:35

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