

(916) 445-2641

September 28, 1976

REDACTED TEXT

Dear REDACTED TEXT,

This is in response to your letter of September 17, 1976. You have a client who is seeking advice regarding the applicability of the California sales tax to the following operation:

Your client is an independent contractor who provides failure analysis reports regarding the design and operation of electronic circuitry and components to various companies. As part of such failure analysis reports, your client provides photomicrographs with his reports to illustrate the failure analysis. In other failure analysis reports, your client splits the failing component (provided by the company requesting the report) for analysis and provides a cross-section of the component, encasing the same in plastic for ease of handling. The reason for providing the section is the same as the reason for providing the photomicrographs, that is, to illustrate the failure analysis explained in the report.

In some cases, your client is sent the component and requested to split the component at a certain point, encase it in plastic and return it to his client without providing a failure analysis report.

Your client charges an hourly rate for his failure analysis consulting work and does not charge separately for the photomicrographs or the sections. In the cases where he provides the service of splitting and encasing the components in plastic and returning the same to his client without providing a failure analysis report, he charges an hourly rate. His fee is based entirely on his hourly rate multiplied by the length of time spent on each project.

The distinction outlined in determining whether a particular transaction involves a sale of tangible personal property (taxable) or the transfer of tangible personal property incidental to the performance of a service (nontaxable) is one of the true object of the contract; that is, is the real object sought by the buyer the service per se or the property produced by the service? If the true object of the contract is the service per se, the transaction is not subject to tax even though some tangible personal property is transferred. See our Regulation 1501 "Service Enterprises Generally," copy enclosed for your reference.

We are of the opinion that sales tax does not apply to charges made by your client for preparing and furnishing failure analysis reports to his customers. It is immaterial that your client may furnish photomicrographs and sections to his customer since no separate charge is made for these items.

Where your client does not provide a failure analysis report but prepares a section from a component provided to him by his customer, the sales tax is applicable. Revenue and Taxation Code Section 6006(b) provides that "sale" means and includes the producing, fabricating, or processing of tangible personal property for a consideration for consumers who furnish the materials used in the producing, fabricating, or processing.

Herewith the sample section which accompanied your inquiry.

Very truly yours,

Gary J. Jugum
Tax Counsel

j:alicetilton
Enclosures

bc: REDACTED TEXT – District Administrator