

M e m o r a n d u m**515.0390**

To: San Jose – Auditing (PMS)

Date: July 23, 1970

From: Tax Counsel (JM) – Headquarters

Subject: A--- M---, Inc.
XXXX --- Road
--- ---, CA XXXXX

SR -- XX XXXXXX

Your memorandum of June 11, 1970, requests an opinion with regard to the taxability of “breadboards” under the terms of an agreement between above taxpayer and S--- Corporation.

We have examined the agreement and the photographs attached to your memorandum and conclude that the entire cost (sales price) of the breadboard models is subject to the tax, as the sale of tangible personal property.

In distinguishing between a research and development agreement and an agreement for the sale of tangible personal property, we have taken the position that we will look to the primary purpose of the agreement.

Section 1(f) of the agreement defines a “breadboard” as “an assembly of MOS devices [which?] together will functionally duplicate a Production Set and will have the performance characteristics specified in Exhibit A attached hereto and made a part hereof.”

Exhibit A was not attached to copy of the agreement, however, we assume from the above that Exhibit A contains predetermined specifications and characteristics.

Section 2, Breadboards, expressly provides that AMI will develop two breadboards for which it is to receive payment for time and materials specifically devoted to the two breadboards in a sum not to exceed \$125,000. AMI’s obligation under this section 2 shall be discharged upon delivery to S--- of said two breadboards within the time provided. S--- retains the right to reject the breadboards if they fail to comply with predetermined specifications (Exhibit A). S--- agrees to furnish engineering consultation and the necessary Desk Top Calculator equipment to support the development. S--- employees will actively participate in the design of the breadboards.

The agreement further provides under section 5, Proprietary Rights, Patents and Indemnities, that the MOS Technology used to develop the breadboards shall remain vested in AMI but that the breadboards, upon acceptance, became the sole property of S---. MOS Technology is defined as, “The semiconductor processes and techniques utilized in the actual manufacture of a given circuit configuration on a single chip of semiconductor base and the packaging thereof.”

In view of the above provisions, it appears to us that S--- is contracting for items of tangible personal property to be developed from predetermined specifications and not for the ideas, data or information relating the the manufacture of the breadboards. S--- appears primarily interested in acquiring the breadboards for their intrinsic value as items and not interested in the purchase of the data developed, as such, in the course of their manufacture.

We are returning the contract and pictures to you as requested.

JM:smb
Attachments

WEB:ac