

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

*In the Matter of the Petition of INTEL CORPORATION for Redetermination under the  
Sales and Use Tax Law*

*Appearances:*

*For Petitioner:* Mr. Ronald B. Schrottenboer  
Attorney at Law

*For Business  
Taxes Appeals  
Review Section:*

Mr. Donald J. Hennessy  
Assistant Chief Counsel

*For Sales and  
Use Tax  
Department:*

Mr. Robert Nunes  
Deputy Director  
Mr. David Levine  
Staff Counsel

MEMORANDUM OPINION

This opinion considers the merits of a petition for redetermination of sales tax in the amount of \$555,552.27 which was heard and taken under consideration by the Board on November 20, 1991 in Sacramento, California.

Petitioner entered into a contract with Burroughs Corporation to license to Burroughs a process for producing integrated circuits (ICs) to a design developed by Burroughs. The process was to be transferred to Burroughs so that Burroughs could manufacture the ICs using petitioner's process including patents, copyrights and intellectual property rights. The IC design remained the property of Burroughs. The process design remained the property of petitioner. The ICs could then be manufactured for sale to others by both parties to the contract.

As a part of the contract, petitioner transferred written information, instructions, schematics, database tapes, and test tapes. The database tapes contained the IC design in digitized form defining the tooling coordinates. The test tapes were used to evaluate test ICs produced by Burroughs. Neither the database tapes nor the test tapes had existed previously in the form in which they had been transferred. If the test ICs performed to specification, the process transfer would be regarded as successful. Neither the database tapes nor the test tapes were used to operate equipment, either to produce ICs or tooling.

Petitioner entered into a contract with Advanced Micro Designs (AMD) under which petitioner licensed AMD to produce ICs designed by petitioner using process information designed by petitioner. Both the design and process had been copyrighted or patented by petitioner. Petitioner transferred copies of existing proprietary written information, instructions, schematics, database tapes, and test tapes to AMD similar to the transfers to Burroughs. Neither contract specified a contract price for the tangible elements.

The issue raised by the petition was whether the sales tax should apply to the entire transfer price or only to the amount attributable to the tangible items transferred.

The Board concluded that in agreements of this type there are for sales and use tax purposes, two transfers. One is the tangible personal property which may consist of engineering notes, manuals, schematics, database tapes, drawings and test tapes. The second is the sale of intangible property which consists of the license to use the information under the copyright or patent.

The Board further concluded that in the absence of a contract price for the tangible elements, the tax applies only to the value attributable to the tangible elements including the cost of manufacturing the specific tangible properties. This includes material costs, fabrication labor, and a suitable markup for overhead and profit. While suitable markups vary depending on the industry or taxpayer, the markup considered suitable in this case was 100% of the cost of materials and labor. The value attributable to the intangible elements is not subject to tax.

The Board accepted petitioner's valuation of the tangible elements of \$33,000. The Board concluded that the amount subject to tax should be reduced to that amount.

The Board ordered the matter redetermined in accordance with these findings.

Done at Sacramento, California, this 4th day of June 1992.

Ernest J. Dronenburg, Jr., Member  
Matthew K. Fong, Member  
Windie Scott, Member

Attested by: Burton W. Oliver, Executive Director