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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Controller, Sacramento

October 23, 1995

BURTON W. OLIVER
Executive Director

REDACTED TEXT

Re: REDACTED TEXT, Case No. REDACTED TEXT

Dear Mr. REDACTED TEXT:

This is in response to your letter of June 19, 1995, in which you refer to an earlier letter sent to the Collections Unit. You state as follows:

“Our office represents REDACTED TEXT, the trustee in the above-referenced bankruptcy case. In my letter to you dated September 9, 1994, I explained that the sales tax deposit you are holding for REDACTED TEXT is an asset of the bankruptcy estate and should be turned over to the trustee. A copy of my letter is enclosed for your convenience.

“Our office has received neither a check representing the deposit nor a response to my letter. May I please hear from you as soon as possible so that we may resolve this matter. Thank you for your anticipated cooperation.”

Revenue and Taxation Code section 6701 provides that the Board, whenever it deems it necessary to ensure compliance with the Sales and Use Tax Law, may require any person subject thereto, to place with it such security that the Board may determine. Any security in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions shall be held by the Board *in trust* for use solely in the matter provided in this section and Revenue and Taxation Code section 6815. Revenue and Taxation Code section 6815 provides that if a business is discontinued and the Board holds security pursuant to Revenue and Taxation Code section 6701, such security when applied to the account of the taxpayer shall be deemed to be a payment on account of any liability of the taxpayer to the Board on the date the business is discontinued.

The Bankruptcy Code provides that if there is a restriction placed on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law, that restriction also applies in the bankruptcy proceeding. (11 USC § 541(c)(2).)

The sales tax deposit required by Revenue and Taxation Code section 6701 is required to be held in trust for the beneficial interest of the taxpayer (the debtor in this case) and used solely in the manner provided in section 6701 and 6815. That is, the Board is restricted under state law

from using the security for any purpose other than as specified in these sections. This restriction is equally applicable in the bankruptcy proceedings. Hence, the Board of Equalization may not release the sales tax deposit to the trustee.

If you have any further questions in regard to this matter, please do not hesitate to write.

Your very truly,

Anthony I. Picciano
Staff Counsel

AIP:cl

cc: San Jose District Administrator