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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Executive Director

June 22, 1992

REDACTED TEXT

Re: REDACTED TEXT

REDACTED TEXT:

Thank you for your frank telephone discussion of the issues in the case of the above entitled account.

As I stated, while the Decorative Carpets, Inc. case involved excess tax reimbursement, it also clearly stands for the proposition that the seller of tangible personal property cannot be unjustly enriched at the expense of the consumer or the state. If I, as a retailer, sell tangible personal property to you, I may contract with you as the purchaser to "reimburse" myself for the tax I am obligated to pay to the state. (See civil Code § 1656.1). If I do not pay the tax to the state, what have I collected but something other than "reimbursement". By the same token, a third party cannot be unjustly enriched by taking the "reimbursement" which is not part of the selling price as part of its security interest.

If tax reimbursement is not collected by the seller, a third party with a security interest has no right to an amount equal to what was not collected. However, the tax is still due and owing to the state regardless of whether such reimbursement was collected or not.

In the case at hand, while it is recognized that a Uniform Commercial Code filing, which is recorded prior in time to the Board's lien, is superior, the amount equal to the sales tax reimbursement should not be part of the receipts that is payable to a third party since that which would result is unjust enrichment to the seller would also unjustly enrich the security holder.

Therefore, we intend to retain an amount equal to the sales tax reimbursement that was collected in order to reduce the tax obligation of the seller for tax liability due and owing to the State of California.

If you have further questions, please do not hesitate to call.

Very truly yours,

Gordon P. Adelman
Senior Tax Counsel

GPA:sr

cc: Mr. Alan Giorgi
Sacramento District Compliance