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May 3, 1993

REDACTED TEXT

Dear Mr. REDACTED TEXT:

This is in reply to your March 4 letter regarding the application of sales tax to sales to a software company under the following facts you provided.

The software company is in the business of selling software for resale. Before the company actually mass produces a product, the company does extensive development by sending early (beta) versions of the software by mail to approximately 2,000 persons for no charge to the recipient. The recipients in turn use the free software and point out any "bugs" to the software company. Given this information, you asked whether the sales of the disks, disk duplicating services, supporting manuals, and shipping costs are exempt from sales tax under Sales and Use Tax Regulation 1541.5, Printed Sales Messages, or other sales and use tax regulations.

Regulation 1541.5 provides the application of tax to sales of "printed sales messages". The regulation implements and interprets Revenue and Taxation Code section 6379.5 which provides the exemption for the sale of "catalogs, letters, circulars, brochures, and pamphlets" consisting substantially of printed sales messages for goods and services. As an exemption statute, section 6379.5 must be strictly construed. The Board cannot enlarge nor extend the exemption beyond the plain meaning of the language employed. (McConville v. State Board of Equalization, 85 Cal.App.3d 156.) Accordingly, we do not believe that the exemption applies to the sale of computer software. Tax applies to the sale to the software company of the disks, the disk duplicating, and the supporting manuals.

For your further information, we are sending a copy of Sales and Use Tax Regulation 1628, Transportation Charges. Generally, tax does not apply to separately stated charges for transportation of property from the retailer's place of business or other point from which shipment is made directly to the purchaser provided the transportation is by other than facilities of the retailer. (Reg. 1628, subd. (a).) Tax would not apply to the retailer's separately stated charge for transporting the software to the recipients as directed by the software company.

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We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick  
Senior Tax Counsel

RLD:sr

Enc.