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STATE OF CALIFORNIA

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LEGAL DIVISION (MIC:82)  
450 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
Ph: (916) 445-6450  
FAX: (916) 323-3387

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December 27, 1994

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BURTON W. OLIVER  
*Executive Director*

Mr. REDACTED TEXT

Dear REDACTED TEXT:

This is in reply to your September 14, 1994 letter regarding the application of sales and use tax to charges by REDACTED TEXT under the following facts you provided:

“1. Introduction.

REDACTED TEXT provides vehicle tracking services to its subscribers using a system of satellites, terrestrial radio towers and REDACTED TEXT owned receiving and transmitting units which are installed in the subscribers vehicles and at subscriber's business office. REDACTED TEXT receives a flat monthly fee per vehicle utilizing its services. The fee includes charges for real-time tracking of a subscriber's vehicles and real-time two way communications between a subscriber and its vehicles. We are of the opinion that the monthly service fee is payment for services and not for use of the equipment installed in subscribers vehicles and on the subscriber's premises. Based on Cal. Code Reg. Title 18 § 1501 (hereinafter Regulation 1501) and the holding in MCI Airsignal v. SBE, 1 Cal App. 4th 1527 (1991) we believe that the “true object” of the contract between REDACTED TEXT and its subscribers is the mobile tracking service and two way communications services that are provided by REDACTED TEXT.

“2. Description of REDACTED TEXT' Automatic Vehicle Location service.

Under the terms of REDACTED TEXT' standard contract, REDACTED TEXT installs a mobile data unit (the “MD units”) in each of the subscribers vehicles. The MD units determine the vehicles' location, speed and heading by receiving signals from a system of Global Positioning System (“GPS”) satellites orbiting the earth.<sup>1</sup> This information is then transmitted via terrestrial radio towers and terrestrial air waves provided by REDACTED TEXT to a unit located at the subscribers office (the “REDACTED TEXT Center”). The information received by the REDACTED TEXT Center is displayed on a computer terminal that includes both mapping and text format. The location of the subscribers vehicle are shown on a detailed map of the area. The accompanying text includes information regarding the vehicles speed, heading, location and distance from the subscriber's home base.

“The purpose of the wireless information system is to allow subscribers to keep track of their vehicles and more effectively dispatch vehicles as needed in the subscribers business. Once transmitted, a dispatcher at the subscriber's home base is able to determine the exact location of each vehicle, its speed and its heading as shown on a real-time computer generated map displaying all of the subscribers vehicles. The system provides the dispatcher with the ability to allocate work assignments to its drivers in the field in the most efficient manner possible. For example, a messenger company can, in real-time, allocate pick-ups among its drivers in the most efficient manner possible given their locations and the location of pick-ups and deliveries. This tracking system thus increases route efficiency and reduces the need for extensive pre-planning.

“The tracking system can also aid in retrieving stolen vehicles should the need arise. The service also allows for two-way messaging between a driver and his or her home base using a 4-line LCD read out to display messages. The driver can enter a response using a 30 key alpha-numeric keypad incorporated in the MD unit.”

Your letter goes on to note that REDACTED TEXT retains title to the equipment provided to its subscriber under the service contract. REDACTED TEXT is responsible for all maintenance and repair with respect to such equipment. There are no separate charges for the use of the equipment resulting from normal wear and tear. Subscribers pay a flat monthly fee for use of the vehicle tracking system and the two-way radio communication systems. Without the airwaves provided by REDACTED TEXT, the equipment is useless in the hands of the subscriber. REDACTED TEXT provides the equipment only to subscribers to the REDACTED TEXT service. REDACTED TEXT pays sales tax reimbursement on its purchase of the component parts used in the MD units and all other tangible personal property used by REDACTED TEXT to provide the information services provided to its subscribers. REDACTED TEXT requires the subscriber to return the equipment to REDACTED TEXT at the end of the contract term.

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<sup>1</sup> GPS is owned and operated by the United States government.

We assume that, if REDACTED TEXT is required to be licensed by any governmental agencies to provide communication services, REDACTED TEXT holds such license and provides the MD units as a part of those services. We also understand that REDACTED TEXT furnishes the units to subscribers without any specific lease agreement. Given those assumptions, we agree with your conclusion that REDACTED TEXT' providing the units to subscribers is incidental to REDACTED TEXT providing communication services. In such case, we believe REDACTED TEXT is the consumer of the tangible personal property furnished to its subscriber. REDACTED TEXT should pay sales tax reimbursement or use tax on its purchase of the equipment it uses in providing the services. Tax does not apply to REDACTED TEXT' charge to its customers for providing the communication services.

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:plh

cc: San Jose District Administrator - GH  
Mr. David Levine