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May 4, 1994

BURTON W. OLIVER
 Executive Director

Mr. --- ---
 --- ---, USA
 XXXX --- --- Road
 ---, CA XXXXX

Re: --- --- USA Inc.
 SY -- XX-XXXXXX

Dear Mr. ---:

I am responding to your letter of March 8, 1994. You inquire whether your company is liable for sales tax on delivery charges. You explain that your customers can pick up the property they purchase from you or may choose to have you deliver the property to them. When you deliver the property, you do so in your own vehicles.

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers, measured by their gross receipts from retail sales of tangible personal property, unless the sale is otherwise excluded or exempted by statute. A retailer's taxable gross receipts include the total amount of the sales price of retail sales of tangible personal property unless specifically excluded from tax. That is, unless there is a specific exclusion, a retailer owes a sales tax on all amounts received in connection with the retail sale of tangible personal property. The amount in question here is received in connection with the retail sale of tangible personal property and is taxable unless an exclusion applies.

The exclusion relevant here is Revenue and Taxation Code section 6012(c)(7) and Regulation 1628 (a copy of which is enclosed). Since the delivery in question is by your own trucks, sales tax will apply unless the following conditions are satisfied:

- a. The delivery charge must be separately stated on your company's contract or invoice.
- b. The delivery must from your business or other point from which shipment is made "directly to the purchaser"; and
- c. Delivery must occur after the sale is made to the purchaser.

When all these conditions are met, the separately stated delivery charges are deductible from your gross receipts, not to exceed a reasonable charge. Of particular importance is the requirement that the delivery occur after the sale to the purchaser occurs, that is, title must pass to the purchaser before the delivery begins.

Pursuant to Uniform Commercial Code section 2401(2), as restated in Regulation 1628(b)(3)(D), title passes and the sale occurs at the time the seller completes its responsibility with respect to physical delivery of the property, unless the parties have expressly contracted for the title to pass earlier. With your letter, you have enclosed a letter from your insurance broker, R&R Insurance Brokers, regarding insurance coverage for property in transit. I assume that you included it to show that the sale of the property occurs prior to delivery. Your insurance broker has concluded that for insurance coverage, the sale occurs when the customer pays for the property.

Notwithstanding treatment of your transactions for insurance purposes, under the Uniform Commercial Code and Regulation 1628(b)(3)(d), title does not pass, and the sale does not occur, until you complete delivery unless your contract of sale explicitly passes title prior to delivery. Your letter does not indicate that your company has an express agreement with customers that title passes before delivery. Thus, based on the information you have provided us, we conclude that your delivery charges are subject to tax.

I hope this analysis answers all the questions you may have regarding this matter. If you have additional questions, please feel free to write again.

Very truly yours,

Victor G. Matl
Tax Counsel

VGM:cl

Enclosure

cc: --- District Administrator