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February 24, 1994

BURTON W. OLIVER  
Executive Director

Mr. C--- -. L---  
Senior Corporate Tax Officer  
U.S. B---  
XXX S.W. --- Avenue  
P. O. Box XXXX  
---, -- XXXXX-XXXX

Re: **SC -- XX-XXXXXX**  
**Ruling Request**

Dear Mr. L---:

This is in reply to your December 14, 1993 letter regarding the application of California sales and use tax to charges for computer hardware and software under the following facts you provided:

“U.S. B--- (USBC) is the parent of an affiliated financial services group, which primarily provides banking related services in California, Nevada, Oregon, Washington and Idaho. USBC from time to time as part of its trade or business acquires personal property which it then resells to its various subsidiaries, including its --- subsidiaries located in the aforementioned states: U.S. B--- of California (USBCa), U.S. B--- of Nevada (USBN), U.S. N--- B--- of Oregon (USBO), U.S. B--- of Washington (USBW), and U.S. B--- of Idaho (USBI).

“As part of a comprehensive plan to upgrade all existing branch computer technologies at more than 400 --- branches operated by these five --- subsidiaries, U.S. B--- and these --- subsidiaries have undertaken a project entitled the Integrated Customer Access Network (ICAN) project. The project is structured such that USBC will first acquire all related computer hardware, software and related equipment from a third party vendor who will ship these items to the I--- Customer Solution Center in --- City, California. On a branch-by-branch basis,

I--- will unpack the hardware, load certain software and configure the package in the same arrangement that it will be used at specific --- branches in order to test to ensure that the hardware and software will function properly before they are shipped to the final destination subsidiary branch. Once tested, functioning equipment will be repacked by I--- and shipped from --- City, California at the direction of USBC to a specific branch of either USBCa, USBN, USBO, USBW or USBI. USBC will bill each shipment to the appropriate --- subsidiary for shipments made to their branches.

“I--- will provide some of the equipment to USBC, but the majority of the items will be purchased from other vendors by USBC. Regardless of which vendor sells the equipment to USBC, all such purchases by USBC will be for resale to affiliated --- subsidiaries.

“I---’s specific tasks performed at the --- City Customer Solution Center with respect to the ICAN project will include (all for the purpose of testing): receiving the equipment and software into inventory for USBC, unpacking, assembly, installation of software on file servers and computer workstations, application of inventory control labels, configuring various equipment, running diagnostics to ensure functionality, disassembly/disconnecting items from each other, repackaging each piece, and shipment to the final destination branch as determined by USBC.

“The ICAN equipment will not be used to process any --- transactions or data until shipped by I--- on behalf of USBC to one of the final destination branches where the previously tested equipment will be installed.”

We assume that there is no participation in the transaction in any way by any local office, branch, outlet, or other place of business in this state of USBC.

The sales tax is imposed upon on all retailers at the applicable rate of the gross receipts from the sale of tangible personal property sold at retail in this state. If there is no participation in the sale by any place of business of USBC in this state, the sale is not subject to sales tax. See Sales and Use Tax Regulation 1620, Interstate and Foreign Commerce, Subdivision (a)(2)(B).

The California use tax is imposed upon the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state. When USBCa purchases the computer hardware and software from USBC for use in this state, the use is subject to use tax. As a retailer engaged in business in this state, USBC is responsible for collecting the use tax from USBCa and providing it with a receipt as provided in Sales and Use Tax Regulation 1686, Receipts For Tax Paid to Retailers. (Rev. & Tax Code § 6203.)

We assume that USBC makes no sales of tangible personal property in California subject to sales tax; that is, USBC has no place of business in this state which participates in sales of tangible personal property by USBC such that USBC would be required to hold a seller's permit.

In such case, USBC may issue resale certificates to the hardware vendor and to I--- to purchase the respective hardware, software, and assembly labor ex-tax. However, the example of the resale certificate you provided as Exhibit A shows an account number issued by this Board, SC -- XX-XXXXXX. That account number is for a certificate of registration-use tax, rather than a seller's permit, and does not allow USBC to purchase tangible personal property under a resale certificate. See Revenue and Taxation Code sections 6029 and 6093. Therefore, in accordance with Sales and Use Tax Regulation 1668, subdivision (b) in lieu of a seller's permit number, USBC should note on the resale certificate that it makes no sales subject to sales tax in this state.

We confirm your understanding that use tax does not apply to charges for the tangible personal property which USBC has shipped out of state to USBN, USBO, USBW, and USBI for their use of the property solely outside of this state.

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

Enclosures - Regulation 1620 and 1668