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**STATE BOARD OF EQUALIZATION**

916/445-3673

December 21, 1973

Dear \_\_\_\_\_:

Re: \_\_\_\_\_

Your letter of October 27, 1973 to the Occasional Sales Use Tax Unit, and the attached brief, has recently been referred to this office for review and response. After carefully considering the arguments and authorities cited therein, we conclude that the position expressed in our letter to you of September 26, 1973 is correct. That is, \_\_\_\_\_, as an unincorporated association, is a taxable entity separate and apart from its member, \_\_\_\_\_. Accordingly, the transfer of the aircraft from \_\_\_\_\_ to \_\_\_\_\_ mother, \_\_\_\_\_ cannot qualify for the family exemption provided by Revenue and Taxation Code Section 6285 as a transfer from child to parent.

Your attention is invited to subdivision (a) of Section 6275 of the Revenue and Taxation Code which specifically provides that every person making a retail sale of an aircraft is a retailer for the purposes of the Sales and Use Tax Law. The definition of person includes an association. (Rev. & Tax. Code Sec. 6005.) \_\_\_\_\_ is, therefore, a person for sales and use tax purposes and is a retailer in the contemplation of Section 6275 as a result of the transfer of title to the aircraft.

The sales tax treatment of an unincorporated association as a separate entity is clearly supported by current California statutory and case law. Section 388 of the Code of Civil Procedure, subdivision (a), authorizes unincorporated associations to sue and be sued in their chosen name. More importantly the California Corporations Code provisions dealing with unincorporated associations give specific authority to such entities to purchase, own, hold, pledge, encumber or sell real estate and other property. (Corporations Code Sec. 20001.) Finally, the California courts have determined that unincorporated associations are entitled to general recognition as separate legal entities. See *White v. Cox*, (1971) 17 C.A. 3d 824, which traces the development of this principle in California law.

Very truly yours,

Richard H. Ochener  
Tax Counsel

RHO:ba