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January 12, 1994

BURTON W. OLIVER
Executive Director

Ms. J--- L. P---
Senior Manager
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XXX --- --- Drive
--- ---, CA XXXXX

Dear Ms. P---:

Re: J--- C---, International

This is in response to your letter dated October 27, 1993, in which you ask the tax consequences of a lump sum contract which includes services and tangible personal property.

J--- C--- is engaged in operating and franchising weight loss centers and provides customers with individual counseling, lifestyle classes and extensive reference materials on weight loss and weight maintenance. The food is purchased separately and sales tax is paid on the sale of taxable food products. A one-time fee is presently charged to customers, varying from \$19 to \$79 depending on whether there is a new customer promotional program in effect.

"J--- C--- is considering changing its fee structure to a single, lump sum amount which will entitle customers to individual counseling lifestyle classes, extensive reference materials, audio tapes and video tapes. The proposed lump sum fee for the services and tapes is \$199.00. Currently, the audio tapes are sold separately and the video tapes are not offered for sale by the Centres. J--- C---'s cost to acquire the tapes is approximately \$9 for the audio tapes and \$11 for the video tapes."

You ask if the lump sum fee of \$199 is taxable. You contend it is not subject to California sales or use tax because J--- C--- is rendering services (weight loss services) and is not selling the audio and video tapes. You take the position that the tapes are tools which can be

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J--- C---, International

used to reinforce the training and counseling but that they are incidental because all materials included on the tapes is presented in the individual counseling session and lifestyle classes.

You have not stated whether the food J--- C--- sells can be purchased if a person does not pay the membership fee. In addition, you have not told us how much the general public is paying for the audio and video tapes.

You stated that the membership fee is presently between \$19 and \$79 and that J--- C--- is going to increase the price to \$199, for a minimum increase of 150 percent. It appears from your letter the only difference between the existing program, for a one-time fee of \$19 to \$79, and the new program, for a one-time fee of \$199, is that the customer will receive additional tangible personal property (audio and visual tapes). Based on this fact, the substantial portion of the proposed fee is attributable to the transfer of tangible personal property, and we conclude that the entire fee is subject to tax as gross receipts from the retail sale of tangible personal property. In light of this conclusion, it is not necessary for us to consider the implications, if applicable, of J--- C---'s requiring customers to pay the membership fee in order to purchase the meals sold by J--- C---.

If our understanding of the facts is incorrect feel free to write again. If you do write again, please provide us with copies of the current, and proposed membership agreements. Also, please explain with specificity the difference between the two agreements and state the retail selling price of any tangible personal property which is provided.

Sincerely,

Rachel M. Aragon
Staff Counsel

RMA:jlh