

**STATE BOARD OF EQUALIZATION**

(916) 445-5550

June 12, 1990

Ms. L--- W---  
D---  
XXX --- ---  
--- ---, CA XXXXX

Re: SR -- XX-XXXXXX

Dear Ms. W---:

This is in response to your letter dated May 25, 1990. When you sell tangible personal property to a California insurance company, you charge it sales tax reimbursement. Your insurance company purchaser has now claimed an exemption based on a recent court case.

Section 28(f) of Article XIII of the California Constitution provides that the gross premiums tax on insurance companies is in lieu of all other taxes, with exceptions not relevant here. In 1982, one court held that this "in lieu" provision applied only when the activity sought to be taxed is reasonably related or incidental to activities traditionally associated with the insurance industry. (Massachusetts Mutual Life Ins. Co. v. County of San Francisco (1982) 129 Cal.App.3d 876 (upholding city tax on activity not traditionally associated with the insurance industry).)

The California Supreme Court recently overruled the Massachusetts Mutual case and held that the "in lieu" provision applies to all activities of an insurance company. (Mutual Life Ins. Co. of New York v. City of Los Angeles (1990) 50 Cal.3d 402.) However, this case does not apply to your sales to the California insurance company.

A retailer owes sales tax on its retail sales of tangible personal property in California. (Rev. & Tax. Code § 6051.) The retailer may collect sales tax reimbursement with respect to those sales if pursuant to contract. (Civ. Code § 1656.1.) That is, sales tax is a tax on the retailer, not on the purchaser, even if the retailer collects sales tax reimbursement (often itemized as "sales tax") from the purchaser. Since your insurance company purchaser is not paying a tax when it pays you

sales tax reimbursement, the "in lieu" provisions considered in the cases discussed above do not apply.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine  
Tax Counsel

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