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November 2, 1995

BURTON W. OLIVER
Executive Director

Mr. D--- J. E---
 B--- Systems
 XXXX --- --- Court
 ---, California, XXXXX

Re: Interstate Sales
 SR -- XX-XXXXXX

Dear Mr. E---:

This is in response to your letter dated September 13, 1995, in which you inquire about the application of California's Sales and Use Tax Law on interstate purchases.

Although you have not stated the nature of your company's business, a review of the company's seller's permit reveals that B--- Systems is engaged in the business of selling computer hardware and canned software. Your inquiry is based on the following scenario:

"A company ships from a location within California. The purchaser chooses the carrier, who picks up the merchandise and delivers it to the purchaser's location in another state. The state into which the merchandise was delivered considers the sale taxable in their jurisdiction."

You inquire: "Is this sale also taxable in California?"

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempted by statute. (Rev. & Tax. Code § 6051.) Revenue and Taxation Code section 6396 provides an exemption for sales in interstate commerce. This exemption is explained in subdivision (a)(3)(B) of Sales and Use Tax Regulation 1620 (copy enclosed):

"Shipments Outside the State--When Sales Tax Does Not Apply. Sales tax does not apply when the property pursuant to a contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer, by means of:

"1. Facilities operated by the retailer or

"2. Delivery by the retailer to a carrier, customs broker or forwarding agent whether hired by the purchaser or not, for shipment to such out-of-state point. As used herein the term 'carrier' means a person or firm regularly engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers. The term 'forwarding agent' means a person or firm regularly engaged in the business of preparing property for shipment or arranging for its shipment. An individual or firm not otherwise so engaged does not become a 'carrier' or 'forwarding agent' within the meaning of this regulation simply by being designated by a purchaser to receive and ship goods to a point outside this state"

Regulation 1620(a)(3)(A) cautions that regardless of the intent to deliver the property outside of this state, "tax will apply if the property is diverted in transit to the purchaser or his representative in this state or for any other reason is not delivered outside this state."

For purposes of this opinion, we assume that neither the purchaser nor its agent or representative will take possession or control of the tangible personal property in this state. We also assume the purchaser hires a common carrier to take delivery of the merchandise in California, the purchaser is not a resident of California, and the merchandise is purchased for use outside of California. The two requirements of the interstate exemption are: the contract of sale must require shipment outside of California, and the property must be shipped outside of California without the purchaser or its agent or representative taking possession or control of the property in California. When a common carrier transports the property outside of California, either party can hire the carrier. Thus, the transaction as posed in your letter satisfies this condition of the exemption. You have not stated, however, whether the contract of sale requires the merchandise to be shipped out of state. If the shipment outside of the state is pursuant to a contract provision requiring the shipment, the transaction posed in your letter would be exempt from sales tax.

If we can answer any other questions please feel free to write again.

Sincerely,

Patricia Hart Jorgensen
Senior Staff Counsel

PHJ:cl
Enclosure (Regulation 1620)

cc: San Diego District Administrator