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February 27, 1995

BURTON W. OLIVER
Executive Director

Mr. I--- K---
G--- P--- S---, Inc.
XXXXXX West --- Blvd., Suite XXX
--- ---, CA XXXXX

Re: G--- P--- S---, Inc.
SR -- XX-XXXXXX

Dear Mr. K---:

This is in response to your letter dated January 3, 1995 regarding your acceptance of a certificate entitled "State Resale Certificate from W--- H--- S---, Inc." You sell dental x-ray film to W--- H--- S---, Inc. [WHS]. In the certificate issued by WHS, it certifies that it is purchasing the film in order to export it from the United States. You ask whether you may accept the certificate "in lieu of a resale no."

A retailer owes sales tax on its retail sales of tangible personal property in California unless the sale is specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) All sales made by a retailer are presumed to be taxable retail sales unless the retailer accepts in good faith a timely and valid resale certificate. (Rev. & Tax. Code § 6091.) A purchaser may issue a resale certificate only if the purchaser is purchasing the property for resale in the ordinary course of business in the form of tangible personal property. (Reg. 1668.)

Although the certificate in question is entitled "State Resale Certificate," it is not, in fact, a resale certificate. One of the requirements of a valid resale certificate is that the purchaser certifies therein that it is purchasing the property for resale. (Reg. 1668(b)(1)(D).) WHS does not certify that it is purchasing the property for resale, but instead certifies that it will export the property. It therefore appears WHS will take delivery in this state of property purchased from you, export the property, and then use it outside the United States.

Since WHS is purchasing the property for use, your sale is at retail. Since you are making a retail sale in California, sales tax applies to that sale unless there is some basis for exemption. Accordingly, the primary question is whether the facts certified by WHS form the basis for an exemption from tax. The exemption that may be relevant is for sales for export, as explained in subdivision (a)(3)(C) of Regulation 1620:

"1. When Sales Tax applies. [S]ales tax applies when the property is delivered in this state to the purchaser or the purchaser's representative prior to an irrevocable commitment of the property into the process of exportation. **It is immaterial that the disclosed or undisclosed intention of the purchaser is to ship or deliver the property to a foreign country or that the property is actually transported to a foreign country.**

"....

"2. When Sales Tax Does Not Apply. Sales tax does not apply when the property is sold to a purchaser for shipment abroad and is shipped or delivered by the retailer to a foreign country. To be exempt as an export the property must be intended for a destination in a foreign country, it must be irrevocably committed to the exportation process at the time of sale, and must actually be delivered to the foreign country prior to any use of the property. Movement of the property into the process of exportation does not begin until the property has been shipped, or entered with a common carrier for transportation to another country, or has been started upon a continuous route or journey which constitutes the final and certain movement of the property to its foreign destination.

"....

"Export has not begun where property is transported from a point within this state to a warehouse or other collecting point in this state even though it is intended that the property then be transported, and in fact is transported, to another country...." (Emphasis added.)

The wording of the certificate does suggest that WHS intends to export the purchased property. However, the facts certified in the certificate do not support a finding that the sale is an exempt sale for export since you will be delivering the property to WHS in California. Also, please note that, even if the facts were such that your sale qualified as an exempt sale for export, a certificate issued by your purchaser would not relieve you of liability for tax. Rather, you would be required to obtain, and retain, documentation that establishes that the property was actually exported in a manner qualifying the sale for exemption from sales tax. (See subdivision (a)(3)(D) of Regulation 1620, a copy of which is enclosed.)

Mr. I--- K---

-3-

February 27, 1995
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In summary, based on the information in your letter, we conclude that you are making taxable sales of tangible personal property in California, since the sales are at retail and do not qualify for exemption.

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

Sincerely,

David H. Levine
Supervising Staff Counsel

DHL:cl

Enclosure

cc: --- --- District Administrator