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March 17, 1994

Re: ---

Dear Mr.: ---

This is in reply to your October 12, 1993 letter regarding the application of California sales tax to charges by --- --- --- for products it sells on a subscription basis. You explained the following:

“---” supplies subscription-based research and analysis of the computer hardware and software, communications and related technology industries --- currently offers 26 subscription-based products called “Continuous Services” focused on computing, software, networking, application areas, industry and management, and logical use. The Continuous Services are annually renewable subscription services which highlight industry developments, review new products and technology, and analyze industry trends within a particular technology or market sector.

“Each subscriber to a Continuous Service receives the following:

- “1. Strategic Planning Scenarios. The Strategic Planning Scenarios are issued annually for each Continuous Service. It includes a detailed five-year industry segment forecast identifying key issues and strategic planning assumptions, assessing leading vendor strength and weaknesses, and reviews anticipated product introductions, trends and events.
- “2. Strategic Analysis Reports. The Strategic Analysis Reports are generally published on a quarterly basis and assess key assumptions and forecasts set forth in the Strategic Planning Scenarios. These reports synthesize and analyze key trends and industry developments, discuss vendor strategies and review available products and services.

"3. Research Notes. A set of research notes is issued to clients approximately every two weeks. Each set includes six to eight individual research notes on different topics, which provide up-to-date information and analysis and assess the impact of current developments on strategic planning assumptions with respect to key industry issues.

"4. Research Reviews. All subscribers receive on a monthly basis a - research review that includes a comprehensive summary of nearly all --- publications. "The Strategic Planning Scenarios, Strategic Analysis Reports, Research Notes and Research Reviews are hereinafter referred to as the "Periodicals." In addition to the Periodicals, subscribers to a Continuous Service also receive-the following:

"5. Analyst Telephone Consultation. Continuous Service subscribers are entitled to analyst consultations via telephone. Clients call to obtain more specific data than they be set forth in the periodicals issued to all clients.

"6. Briefings. Clients are invited to attend periodic regional user briefings in which --- analysts review and exchange information with clients on industry developments and trends.

" 7. Industry Conferences. --- presents a large number of conferences annually on significant information technology issues and trends.

"8. Audio and Video Teleconferencing. --- offers numerous audio conferences and video teleconferencing sessions.

"The briefings, conferences and teleconferences are hereinafter referred to as the 'Seminars'."

"A subscriber to a Continuous Service pays a single fee and receives the Periodicals, unlimited telephone consultation and tickets for Seminars. There is a line charge for --- On-Line. Subscribers to a Continuous Service may also purchase additional copies of the Periodicals for a specified fee and may purchase additional tickets for Seminars.

"--- delivers the Periodicals in an [sic] variety of optional formats in addition to mail delivery, including CD-ROM, Lotus Notes electronics formats and --- On-Line. Every subscriber currently receives a paper copy of the Periodicals by mail. There is a seperate [sic] charge for CD-ROMs of approximately \$2500 per Continuous Service. The Company is considering offering subscribers the choice of foregoing the paper version and receiving the CD-ROM version at no additional. The CD-ROM permits full text and graphics search and retrieval of the included materials, enabling a client to search and retrieve information interactively on critical issues. The CD-ROM product also includes a directory of all published Continuous Services materials. --- On-Line is an on-line electronic delivery service that permits full text search and retrieval and offers bulletin boards on key information technology issues," electronic mail and other features. Subscribers connect to --- On-Line from their place of business through a modem.

The Periodicals are also transmitted to the client electronically via modem for placement on their networks and accessible [sic] via Lotus Notes. --- --- is a service through which the Company provides timely delivery by facsimile of updates on major developments as they occur.

“A subscriber who chooses to receive the periodicals on paper, through the mail, will initially receive copies of the periodicals for the 3 months preceding their initial subscription. As a matter of convenience to the clients, so as to avoid the need to store a large number of CD-ROMs, each CD-ROM contains 12 months of rolling periodicals (i.e. the current month's periodicals plus those for the 11 prior months).”

Given this information, you asked that we confirm your conclusion that --- charges for the continuous services are exempt from sales tax under Revenue and Taxation Code section 6362.7, which provides in relevant part:

“(b) There are exempted from the taxes imposed by this part, the gross receipts from the sale of, and the storage, use, or other consumption in this state, of tangible personal property which becomes an ingredient or a component part of any periodical regularly issued at average intervals not exceeding three months, and any such periodical, that is sold by subscription and delivered by mail or common carrier.

“(c) For purposes of this section, "periodical" means any publication that appears at stated intervals at least four times per year, but not more than 60 times per year, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them each issue must be sufficiently similar in style and format to make it evident that it is one of a series. The term does not include printed sales messages, shopping guides, or other publications of which the advertising portion, including product publicity, exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period.

You sent for our review one copy of the publication, Strategic Analysis Reports, four consecutive copies of Research Notes, and four copies of Research Review.

You note that --- does not specify in the subscription agreement the number of issues which --- will distribute during this subscription; however, --- establishes a rigid production schedule with strict editorial due dates. --- establishes the schedules two times each year for the publications to be published in the next six months. The exact number of issues may vary, typically by one issue per year because of scheduling of several publications and calendar limitations such as holidays and weekends. For example, while the Research Notes are issued approximately every two weeks, a subscriber might receive 23, 24, or 25 issues during a year.

Nonetheless, --- publishes Research Notes pursuant to a specific schedule established in advance for the upcoming six months. The periodicals are not issued on an as needed basis nor

only when a certain amount of information has been accumulated. We note that the Research Notes were issued between August 23, 1993 and November 29, 1993 at intervals between 13 to 25 days. However, we believe that, for purposes of Revenue and Taxation Code section 6362.7, if --- has a rigid publication schedule whereby it establishes the Research Notes publication intervals six months in advance, then the publications appear at stated intervals. We, therefore, draw the following conclusions:

We do not believe that the Strategic Planning Scenarios are periodicals. You believe that the Strategic Planning Scenarios (Scenarios) and Strategic Analysis Reports (Reports) are a single periodical, because the Reports update key assumptions and forecasts contained in the Scenarios. We disagree. The publications have different titles, and they are issued at very different intervals. Their dealing with the same subject matter is not determinative. We have previously taken the position that, when a publisher sells a subscription to an annual publication and regularly issues supplements to the subscriber at average intervals not exceeding three months, the sale of the annual publication is subject to tax however, the sale of the supplements may qualify as exempt. See Business Taxes Law Guide Annotation 385.1100. We agree with your conclusion that the Strategic Analysis Reports, Research Notes, and Research Reviews are periodicals. When --- sells the periodicals by subscription and sends them by mail to the recipients, the sale is exempt from sales tax. We believe the exemption applies whether' the periodicals are published on paper or CD-ROM. --- sale of the periodicals for the three months preceding an initial subscription, which are delivered to a new subscriber as part of the subscription, is exempt from tax. Assuming that the CD-ROMS are regularly issued at average intervals not exceeding three months and qualify as periodicals, --- including the information from the 11 preceding months on the CD-ROM does not affect the exemption.

You asked for our confirmation that --- charges for telephone consultations and seminars are nontaxable charges for services. Assuming that a person who purchases a subscription to the Strategic Planning Scenarios is not required to also purchase any telephone consultation and seminars and assuming that --- makes no transfer of tangible personal property in connection with the conferences and seminars, tax does not apply to --- charge.

You also asked for our confirmation that, to the extent Gartner delivers its continuous services electronically to the customer through --- On-Line, and --- the charges are nontaxable. Assuming that --- transfers no tangible personal property to the customer and merely transmits information electronically, tax does not apply to --- charge. The transactions would not involve the sale of tangible personal property.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick  
Senior Tax Counsel

bc: