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October 9, 1992

X-----

BURTON W. OLIVER
Executive Director

Re: X-----

Dear X-----:

This is in response to the letter from your Pittsburgh office dated August 25, 1992 regarding the activities of X-----.

As long as I am on the subject of the uncertainty as to whom to respond, perhaps I could ask a favor. It apparently is the nationwide policy of X----- to sign as X----- without a specific letter-writer being designated.

X----- operates a program where schools collect cash register tapes and redeem them for merchandise provided by X-----.

Each question is quoted below followed by our response.

- "1. Are we correct in our conclusion that X----- purchases the equipment from the supplier for resale and retails it to the supermarket sponsor who, in turn, donates it to the school?"

You state that X----- invoices the supermarket for a percentage of the total cash register tapes (redeemed by the school). I assume that this amount is greater than the amount X----- pays its suppliers for the items provided by X----- . I also assume that the contract between X----- and the supermarkets states that X----- is selling the items in question to supermarkets. Based on these assumptions, we agree that X----- is purchasing the items in question for resale to the supermarkets.

- "2. Are we correct in our conclusion that the California sales tax does not apply to these transactions since the sales occur outside the state?"

I assume that the suppliers are shipping the items in question by delivering them to a common carrier outside California for shipment to the end users in California. Such sales would generally occur no later than the delivery to the common carrier outside California. (See Reg. 1628.) Since the sales occur outside California and sales tax applies only to sales occurring inside California, we agree that California sales tax would not apply.

- "3. Are we correct in our conclusion that the California use tax does not apply to these transactions since the use occurs outside the state when the property is donated prior to shipment to the school?"

This depends on the answers to two questions. First, to whom is the retail sale made and second, where does that person consume the purchased property? Without a review of the relevant documents (e.g., the contract between X----- and the schools, the contract between X----- and its suppliers, and the documents provided to and received from the schools), our response is of course limited to the facts provided in the letter. If we were to review the relevant documents, we might conclude that the facts are different than as described in that letter, or that we did not consider certain important facts.

With the above caveat in mind, I respond based upon the facts set forth in the letter. Based on the description therein, neither the supermarkets nor anyone else receives any consideration from the participating schools. Thus, the transfer to the schools is not a sale of tangible personal property. (Rev. & Tax. Code § 6006.) Since the supermarkets are transferring property to the schools in transactions which are not sales, the supermarkets are the consumers of that property. This means that the retail sale is the sale to the supermarkets.

We regard the supermarkets as consuming the property at the time title is transferred to the donees. Title to the property is apparently transferred to the donees outside California. Under such circumstances, no use tax applies since the purchaser does not use the property in California.

- "4. Are we correct in our conclusion that X----- would have liability for the California sales tax for any property shipped from an in-state location of the supplier directly to a school in California?"

We would regard this transaction as a taxable sale in California. Assuming X----- is a retailer engaged in business in California within the meaning of Revenue and Taxation Code

section 6203, sales or use tax would apply to this sale. (See Regulation 1620 to ascertain whether the sales tax or the use tax would be applicable.) If X----- is not a retailer engaged in business in California, then the supplier would be regarded as the retailer pursuant to the second paragraph of Revenue and Taxation Code section 6007 and would owe sales tax on the sale.

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

Sincerely,

David H. Levine
Senior Tax Counsel

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