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February 26, 1992

Dear Mr. REDACTED TEXT,

Several purchasers of REDACTED TEXT's products which have contracts with the United States have telephoned me to say that you are sending them copies of my letter to you dated December 17, 1991, on the above subject, and that your company is refusing to accept their resale certificates.

The subject of the interpretation of the Aerospace decision when the issue is a contractor's purchase of overhead items which it may use in the accomplishment of both its government and commercial contracts has been the object of much discussion. After I wrote you, this matter was reviewed by several senior members of the legal and auditing staffs.

This matter is certainly not free from doubt, as you are aware. However, it has been determined that, while the legal reasoning expressed in my letter is correct, the sense, if not the actual letter, of the Aerospace ruling requires a different conclusion. We have concluded that, in the situation where a contractor is buying an overhead item (such as one of REDACTED TEXT's books) which it will use in the performance of both its commercial and governmental contracts and those governmental contracts contain the appropriate title-passage clauses, the Aerospace decision permits the contractor to allocate part of the purchase price to its government contracts. The contractor may thus purchase the item ex-tax by issuing a resale certificate to the seller. He must then report and pay use tax on the amount of the sales price which he allocates to his private and commercial contracts. This rule will be followed in the future barring legislative or court action.

Please notify your clients of our conclusion. I apologize for any inconvenience our previous opinion may have caused you.

Sincerely,

John L. Waid  
Tax Counsel

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