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July 15, 1993

BURTON W. OLIVER
Executive Director

Mr. M--- R. F---
H---, E---, W--- & M---
XXX --- Street
--- ---, CA XXXXX-XXXX

Re: N--- G--- Company
SY -- XX-XXXXXX

Dear Mr. F---:

This is in response to your letter dated June 8, 1993 regarding the plan of reorganization of N--- G--- C--- ("NGC"). Specifically, you state:

"Under the proposed plan of reorganization (the 'Plan'), NGC will transfer certain of its assets (including tangible personal property located in California) to a newly-formed corporation ('New NGC') in exchange for (i) certain shares of New NGC common stock ('Acquisition Stock'), (ii) warrants to purchase additional shares of New NGC common stock, (iii) New NGC senior notes, (iv) the assumption by New NGC of certain of NGC's obligations, and (v) New NGC's obligation to fund a payment to a settlement fund established by NGC for the payment of certain asbestos-related claims made against NGC (the 'Acquisition'). New NGC was incorporated in March 1993, but has issued no shares. It is anticipated that New NGC will be capitalized upon the consummation of the Acquisition, which is expected to occur on or about June 30, 1993, unless (as described below) New NGC is required by the Securities and Exchange Commission (the 'SEC') to be capitalized earlier."

You then explain that New NGC may be required to obtain an audited balance sheet in order to comply with SEC filing requirements for the registration statement on Form 10 and for

the registration statement on Form S-1. Since NGC has no assets and has not issued stock, an audited balance sheet cannot be prepared. You further explain that:

"Whether an audited balance sheet is required for the Form 10 or the Form S-1, the only way that New NGC will be able to meet the time constraints under the Plan and the SEC's requirements is to capitalize New NGC with nominal capitalization and issue at least one share of stock before the Acquisition, which will allow Ernst & Young to prepare an audit within this time frame. If such an initial capitalization of New NGC is required, New NGC will be capitalized with \$1,000 contributed by NGC and will issue 1,000 shares of New NGC stock to NGC, with the stock issued to NGC upon the initial capitalization being canceled in connection with the consummation of the Acquisition.

"Finally, whether or not it may become necessary to capitalize and issue nominal shares of New NGC for purposes of the Form 10 or Form S-1 before consummation of the Acquisition, in order to complete the Acquisition by the prescribed date it may be necessary as a practical matter (because of the large numbers and different locations of the assets to be transferred) to begin assigning assets to New NGC in the weeks preceding consummation of the Acquisition. If the Internal Revenue Service does not issue favorable rulings with respect to the federal income tax consequences of the Plan, however, any assets transferred to New NGC will be returned to NGC."

During our telephone conversation on June 30, 1993, you stated that since you wrote your letter, you have received a favorable ruling from the Internal Revenue Service and you have learned that it is likely that the SEC will not require the \$1,000 initial capitalization.

Regulation 1595(b)(4) reads:

"CONTRIBUTION TO COMMENCING CORPORATION OR COMMENCING PARTNERSHIP. Tax does not apply to a transfer of property to a commencing corporation or commencing partnership in exchange solely for first issue stock of the commencing corporation or an interest in the commencing partnership. Tax does apply, however, if the transferor receives consideration such as cash, notes, or an assumption of indebtedness, and the transfer does not otherwise qualify for exemption. The tax is measured by the amount of such consideration attributable to the tangible personal property transferred."

With respect to this regulation and the transactions you describe, you ask for the following opinions:

1. The formation of New NGC in March 1993 without issuance of shares of New NGC does not preclude the proposed transfer of assets to New NGC from

qualifying as a transfer of assets to a "commencing corporation" pursuant to Regulation 1595(b)(4).

A corporation may be considered a "commencing corporation" within the meaning of the regulation even though shares of the corporation are not immediately issued upon its formation. Where there is a delay in the issuance of such stock, we will apply a facts and circumstance test to determine whether a corporation is regarded as a "commencing corporation" when it issues stock in exchange for property.

2. The issuance of 1,000 New NGC shares to NGC for \$1,000 as an integral step in consummation of the Plan (which shares will be canceled, also as part of consummation of the Plan) will not preclude the Acquisition Shares issued in exchange for NGC assets from qualifying as "first issue stock" of New NGC within the meaning of Regulation 1595(b)(4); nor will the transfer of assets to New NGC before actual issuance of the Acquisition Shares affect the qualification of the Acquisition Shares as "first issue of stock" so long as the Acquisition Shares are issued in one transaction after the completion of all transfers; and, accordingly, the value of the Acquisition Shares issued to NGC will not be included in the measure of the sales tax.

It is our understanding from your description of the transactions that even though some of the assets will not be transferred simultaneously in exchange for the Acquisition Shares, the transfers of the assets are part of a single, integrated bankruptcy plan of reorganization in which the Acquisition Shares and other items are being exchanged for all of the transferred assets. This plan has been approved by the bankruptcy court. We also assume that the time between the transfer of the first \$1,000 and the Acquisition will be short, only a few weeks. Under these circumstances, we will regard the transfers of the assets to New NGC as transfers to a commencing corporation partly in exchange for first issue stock of a commencing corporation. Accordingly, the Acquisition Shares will not be regarded as taxable consideration.

3. The amount of each type of consideration received by NGC from New NGC (such as the Acquisition Shares) will be allocated among the assets transferred to New NGC in proportion to those assets' respective fair market value.

The total consideration for the property transferred to New NGC will include the warrants, the New NGC senior notes, the assumption by New NGC of certain of NGC's obligations, and New NGC's obligation to fund a payment to a settlement fund.

To determine the measure of tax for these sales, you multiply the value of all the consideration given to NGC by the ratio of the total value of the tangible personal property located in California (other than resale inventory) to the total value of all property transferred to New NGC. For example, if the total value of consideration is \$5,000,000, the total value of the tangible personal property located in California is \$2,000,000, and the total value of all property

transferred is \$10,000,000, the measure of tax is \$1,000,000. [$\$5,000,000 \times (\$2,000,000/\$10,000,000)$.] We assume, however, that no tangible personal property will be brought into California which would give rise to a use tax liability.

The values used must include the values of all of the property transferred pursuant to the plan, including the tangible personal property and other property transferred before the Acquisition and at the time of Acquisition. The value of the consideration must also include any consideration given pursuant to the plan.

Since we conclude that the Acquisition Shares qualify as "first issue stock" and since the IRS issued favorable rulings, your last two questions need not be addressed.

If you have further questions regarding Sales and Use Tax Law, please do not hesitate to write again.

Sincerely,

Elizabeth Abreu
Tax Counsel

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