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October 11, 1995

Mr. REDACTED TEXT
President & CEO REDACTED TEXT
Burlingame, California 94010-1816

RE: (No Permit Number)
Storage of Property
in District

Dear Mr. REDACTED TEXT:

I am answering your letter to me dated July 17, 1995 regarding your client's storage of property in one district for use in another. You ask about the district tax to be applied to sales to your client. As you recognize in your letter, since you did not identify the taxpayer, this letter does not constitute specific written advice to the taxpayer under Revenue and Taxation Code section 6596.

You describe your client's operation as follows:

"The taxpayer is a not-for-profit corporation that operates a large warehouse facility in which it maintains a stock on hand of general supplies that are used at its hospitals and administrative buildings. The warehouse is located in a District A where the combined state, local and district tax rate is (for example) 7.75%. The hospital and administrative buildings are located in a District B where the combined state, local and district tax rate is (for example) 8.25%.

"The taxpayer's purchasing department, located in District A, places orders with various vendors. The orders are shipped to the warehouse in District A where

they are received, counted, verified, stocked. Ownership to the property vests in the taxpayer at their warehouse in District A. The taxpayer receives requests from internal departments, or fills existing orders from these departments, and delivers the property on its own truck to the hospital or administrative buildings in District B. From an accounting viewpoint, there is no additional sale as the property is merely moved 'on the books' from the warehouse inventory account to the user department's account."

You aver that no further state and local tax is due on the transfer from the warehouse to the internal departments. Your major concern is which district tax applies--A or B. •

OPINION

We understand that the warehouse in District A and the internal departments in District B are not separate "persons" within the meaning of Revenue and Taxation Code section 6005. (Unless otherwise stated, all statutory references are to the Revenue and Taxation Code.) Therefore, the retail sale is the transfer from the vendor to your client. We thus agree with you regarding the state and local tax consequences based on our understanding of the relevant facts. The transaction between your client and its suppliers thus appears complete when the goods are delivered to the warehouse with the state and Bradley-Burns sales and use tax consequences being set at that time.

District taxes are another matter, however. The resolution of this issue turns on whether district transactions or district use tax applies to the transaction. In this discussion, we use the general term "district" to include counties where there is more than one district, like Los Angeles and San Francisco, and districts which take in more than one county--e.g. BART.

All district tax ordinances incorporate the Sales and Use Tax Law. (§§ 7261(b) & 7262(a).) Section 6009.1 states as follows:

"'Storage' and 'use' do not include the keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to or incorporated

into, other tangible personal property to be transported outside the state and thereafter used solely outside the state."

Section 6009.1 applies where the property has no functional purpose other than as a mere object in transit. The temporary storage of property under such conditions is not a taxable use of the property. (Parfums-Corday, Inc. v. St. Bd. of Equalization (1986) 187 Cal.App.3d 630, 638.) The same rule is incorporated into the District Tax Law under the above authority. In the first case, an out-of-district (but in-state) retailer ships the property to the purchaser's warehouse in District A, where it is stored temporarily. The purchaser later transfers it to District Band puts it to its functional use. The property is thus purchased for use in a district and is used there. (See, Reg. 1823(b)(1).) Such transactions are subject to district use tax. Under the above authority, the temporary storage is excluded from District A's use tax; the applicable use tax is that of District B. If the rate in District A was lower than that in effect in District Band the retailer collected District A's use tax, your client is entitled to a credit for its payment of that tax and must self-report the additional district use tax in the quarter in which the property was put to its functional use in District B. If, however, the use tax rate in District A was higher than that in effect in District B, your client would be entitled to a refund of the use tax paid and would self-report and pay the use tax in District B in the quarter in which the property was put to its first functional use there.

The results change dramatically, however, if we assume that the retailer's place of business is located in District A. Section 6009.1 is an exclusion from the use tax only; it does not apply to the transactions (sales) tax. Here the retailer's place of business and that of the purchaser are both located in District A; the transaction is thus a retail sale there. (Reg. 1821(2).) As a result, District A's transactions tax applies to the sale. (Regs. 1822(a)(2) & 1823(a)(2)(B).) The retailer owes tax at the total rate in effect in District A and may collect tax reimbursement from your client at that rate. Assuming it does so, and the District A rate is less than the rate in effect in District B, your client would be entitled to a credit against the tax reimbursement paid in District A (\$ 6406) and would self-report the additional use tax owed to District B. (Reg. 1823(b)(1)(E).) If District A's rate were higher than District B's, however, your client would not be entitled to a refund but also would not owe additional tax to District B. (Reg. 1823(b)(2)(B).)

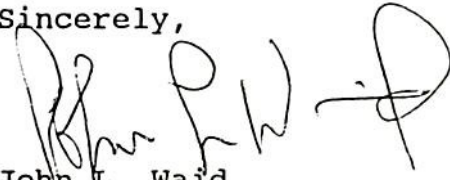
REDACTED TEXT

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October 11, 1995

I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,



John L. Waid
Senior Staff Counsel

JLW:sr
REDACTED TEXT.

CC: Mr. Dennis Fox (MIC:40)
Mr. Larry Micheli (MIC:27)