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February 6, 1997

VIA FACSIMILE AND U.S. MAIL

Ms. E--- S---
Office of --- J--- B---
XXXXX --- ---, Suite XXX
--- ---, CA XXXXX

Re: Regulation 1587

Dear Ms. S---:

This is to confirm our telephone conversation of February 3, 1997 in which we discussed the application of Sales and Use Tax Regulation 1587. We understand that a taxpayer who is engaged in the business of selling horses also sells high quality horse hay. The hay sales are to purchasers for feed for the purchasers' horses. The taxpayer believes that the sales are exempt from taxation under subdivision (b)(2)(A) of Regulation 1587, which states:

“(A) In General. Tax does not apply to sales of feed for food animals or for any non-food animals which are to be sold in the regular course of business.”

As we discussed, the exemption provided in Regulation 1587(b)(2)(A) is based on the explicit language of subdivision (b) of Revenue and Taxation Code section 6358, which provides an exemption for the sale and use of :

“Feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption, or are to be sold in the regular course of business.”

We understand that the taxpayer's purchase of hay for his own horses, held for sale in the regular course of business, is not at issue. Rather, at issue is the taxpayer's sale of hay to other purchasers who, in turn, feed the hay to their horses. Such sales would not necessarily qualify for the exemption. For example, sales tax applies to the taxpayer's sale of hay to a person to

feed a pet horse or a work horse. On the other hand, tax would not apply to the taxpayer's sale of hay to a person to feed a horse the person was holding solely for sale in the regular course of business. In that event, the taxpayer should timely take an exemption certificate from the purchaser. If the taxpayer does not take such a timely certificate, the taxpayer has the burden of showing that the sale qualifies for the exemption.

Tax also would not apply to the taxpayer's sale of hay to a person who purchase the hay solely for resale in the regular course of business. In that case, the taxpayer should accept a timely resale certificate from the purchaser. If the taxpayer does not timely take a resale certificate from the purchaser, the taxpayer would have the burden of proving that such sales are for resale.

We understand that the taxpayer has currently been selected for an audit. Although we have no way of knowing the outcome of the pending audit, in the event that the taxpayer disagrees with the audit findings, we are enclosing information regarding the taxpayer's rights and the appeal process.

Very truly yours,

Charlotte Chyr
Tax Counsel

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Enclosure