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December 31, 1996

E. L. Sorensen, Jr.  
*Executive Director*

Mr. G--- F---  
Controller  
D--- I---  
XXX --- Street, XXth Floor  
--- ---, -- XXXXX

Re: D--- I---

Dear Mr. F---:

Your letter dated November 6, 1996, to Mr. Gary J. Jugum, Assistant Chief Counsel, has been referred to me for response. You state:

“The facts leading to this request are as follows:

1. D--- ‘sells’ to its customers an access to a financial information database.
2. Access is obtained through a pre-written software program that is installed on the clients’ computer.
3. Title AND possession of the software remain with D---.
4. If the client should cancel the service, the program will be deleted from their computer.”

**DISCUSSION**

Retail sales of tangible personal property in California are subject to sales tax, measured by the gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) Revenue and Taxation Code section 6006(a) defines “sale” as a transfer of title or possession of tangible personal property for a consideration. Section 6016 defines “tangible personal property” as personal property which can be seen, weighed, measured, felt, or touched, or which is in any manner perceptible to the senses.

Our understanding is that in selling access to the financial information database, D--- I--- does not transfer title or possession of the prewritten computer program or any other tangible

personal property to its customers. Instead, D--- I--- provides access to the financial information database by installing a prewritten computer program on its customers' computer, and title and possession of the prewritten computer program remains with D--- I--- at all times. In other words, D--- I---'s customers do not have physical possession of the storage media containing the prewritten computer program at any time and the customers do not have control of their own computers while the prewritten computer program is being installed on the customers' computer. Under these circumstances, tax does not apply to the amounts charged by D--- I--- to its customers for the right to access the financial information database.

If you have any further questions, please write again.

Sincerely,

Sophia H. Chung  
Tax Counsel

SHC:rz

cc: --- District Administrator (--)