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September 7, 1993

BURTON W. OLIVER
Executive Director

Mr. G--- A. H---
O---, H--- & S---
--- --- --- Building
XXX --- Street
--- ---, CA XXXXX

RE: Application of Sales Tax to Transfer of Building

Dear Mr. H---:

This is in response to your letter dated August 31, 1993 regarding the sales tax consequences of a transfer of a building.

FACTS

The proposed transaction involves a building currently owned by the City of --- --- (the "City"). A sale/leaseback transaction is planned between three entities: the City; The Community Redevelopment Agency (the "Agency"), an agency of the City; and H--- I--- Corporation, a Delaware corporation. Under the proposed transaction, the ground underlying the building (the "site") will be leased for a term of approximately 55 years to the Agency, which will sublease the site to a trust for the benefit of H--- I--- Corporation. H--- I--- will in turn sublease the site to the City. The building itself will be assigned by the City to the Agency, which will then lease the building to the City. The documentation for this proposed transaction will provide that the owner of the building will be different than the owner of the site. The building however, will not be physically "severed" from the site. The contract may provide that the parties to the transaction agree to treat the building as personal property.

Your letter asks whether the legal severance of the site and the building and the characterization of the building as personal property subjects this transaction to sales tax.

DISCUSSION

Under Revenue and Taxation Code section 6051, sales tax applies to a retailer's retail sale of tangible personal property. A sale of real property is not subject to sales tax. Here, the application of sales tax depends upon whether the legal separation of the building from the site changes the characterization of the building to personal property.

Regulation 1596(a) applies to transfers of buildings and minerals affixed to land. The transfer of such buildings and minerals is treated as a sale of personal property and is taxable if the buildings or minerals are to be physically severed by the seller. If the buildings or minerals are to be physically severed by the purchaser, then at the time of the sale, the buildings or minerals would still be real property. As such, the sale would not be subject to sales tax.

The proposed transaction will not result in a physical severance of the building from the site. Thus, the proposed transaction is one involving the sale of real property rather than personal property and is not subject to sales tax.

Since you have not provided the contracts, we cannot provide a definitive answer with respect to the possible characterization of the building as personal property. There are circumstances in which the parties' characterization of a transaction has a substantial impact on the application of tax. However, under these circumstances, it is unlikely that such a characterization would affect our analysis.

CONCLUSION

It is our opinion that the proposed transfer of the building does not constitute a sale of tangible personal property and thus is not subject to sales tax. If you have any further questions, please do not hesitate to write again.

Sincerely,

Sukhwinder K. Dhanda
Tax Counsel

SKD:plh