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April 5, 2006

BURTON W. OLIVER
Executive Director

Ms. K--- M. K---
Licensed Tax Preparer
I--- A--- S---
P.O. Box XXX
--- ---, California XXXXX

Re: P--- Corporation

Dear Ms. K---:

On May 31, 1995, this office responded to your letter dated May 8, 1995, in which you requested a written legal opinion as to the taxability of certain transactions which P--- Corporation would soon offer to the public. We have concluded that the advice contained in our letter was erroneous. This letter will supersede and replace our previous letter to you on this subject. If P--- has relied on the legal advice contained in our May 31, 1995 letter, it may avail itself of the relief afforded by Revenue and Taxation Code Section 6596, from May 31, 1995 to the date of this letter, if P--- reasonably relied on the advice in the previous letter in failing to report and pay the correct amount of tax due.

In your letter, you stated that P--- Corporation will soon be adding a business of furnishing, delivering, and sometimes installing air intake filters for heating and air conditioning systems. P--- will purchase the air filters for approximately \$3.00. The customer will be signing a one-year contract providing for the furnishing and delivery, or for the furnishing, delivery, and installation of filters in that one-year period. You ask:

1. Installation service for \$29.00 - P---'s service technician will bring and install the air filter for the customer. Who pays the sales tax, P--- at the time of product purchase or the customer?
2. Drop-off Service for \$19.00 - P---'s service technician will bring the air filters to the customer's door, but will not install them. Who pays the sales tax, P--- at the time of product purchase or the customer? If the customer pays the sales tax, how much of the \$19.00 is taxable?

A one-year contract to provide and install filters will generally be a supply contract. P---'s contract for the delivery of filters for the \$19.00 charge is for the retail sale of tangible personal property, and the full \$19.00 amount billed to the customer for the delivery of each filter will be subject to tax.

P---'s contract for the delivery and installation of the filters is identical to the contract for delivery except for the installation and price. Revenue and Taxation Code Section 6012(c) provides:

"Gross receipts" do not include any of the following:

....

- (c) The price received for labor or services used in installing or applying the property sold.

We assume the difference between the \$29.00 including installation and the \$19.00 charged without installation is solely "for labor or services used in installing or applying the property sold." In that case, the \$10,00 "installation charge" is not included in P---'s taxable gross receipts. However, \$19.00 of P---'s \$29.00 charge to the customer is taxable as gross receipts from the sale of the filter which P--- installs.

- 3. Promotional Item given to customer in conjunction with signing a one-year contract for pest control services. Who pays the sales tax, P--- at the time of product purchase or the customer?

Sales of promotional and goodwill gifts to retailers who distribute the material free to their customers for buying certain of their products are taxable retail sales. (Sales and Use Tax Annotation 280.0820 (9/27/65).) Sales tax applies to the retail sale to P--- of these items in this state. If P--- purchases the items from a retailer outside this state for such distribution in this state, P--- is required to pay use tax on the purchase.

If you need any additional information, please contact this office.

Very truly yours,

Thomas J. Cooke
Staff Counsel

TJC/cmm

cc: --- District Administrator - KH