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May 24, 1993

Ms. P--- L---
E---
XXXX --- Drive
--- ---, CA XXXXX

Re: Account No. SR – XX-XXXXXX

Dear Ms. L---:

This is in response to your letter of January 25, 1993. You are a California company that provides convention exhibit component systems to users who either rent or purchase from you. You provide your subcontractor component builders with a resale certificate. You request our opinion of whether a sales or use tax is applicable to certain fact situations.

1A. E--- leases the exhibit to a California company for a show in Dallas, Texas. E--- ships the exhibit by common carrier F.O.B. the loading dock in California, and the rental amount is paid in full before the lessee receives possession. After receipt of the exhibit, the lessee ships it to Texas for use for the entire term of the lease, after which it is returned to California for storage.

Revenue and Taxation Code section 6006.1 and Regulation 1660(b)(2) define a "continuing sale" as "[t]he granting of possession of tangible personal property by a lessor for the duration of the lease as respects any period of time the leased property is situated in this state, irrespective of the time or place of delivery...."

If the lessee provides the lessor with sufficient proof of use outside of California during the lease term, no tax will be applied to the lease payment attributable to such out-of-state use. If the property is in California during any portion of the lease term, it will be necessary to prorate the lease payments between the in-state use and the out-of-state use.

However, if the property is not functionally used in California, some or all of the lease payments applicable to the period of time that the property is in California may qualify for the exclusion provided for in Revenue and Taxation Code section 6009.1: "'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...." It appears that the initial use made in California by your lessee would qualify for this exclusion. Once it is determined that the property will not be used solely outside the state, the prorated in-state storage or other used portion of the lease is taxable in California.

1B. If the lessee chooses to purchase the property after it returns to California, sales tax will apply to the discounted sales price, without regard to whether any portion of the lease payments were subject to sales or use taxes. The out-of-state delivery of tangible personal property to a known resident of California is presumed to be for use within California. This presumption may be overcome by a written statement signed by the purchaser, and retained by Edge, that the property was purchased for use out of state.

2A. Under the next fact situation, E--- contracts with its subcontractors to build an exhibit system for a client that wants to buy the system from E---. The client's first show is in Dallas. The system is shipped F.O.B. the California loading dock and payment is made in full before the client takes possession in California. The client then ships the system to Dallas for its first show and then returns it to California for storage.

Sales tax applies to the sale. The sale took place in California when the purchaser took possession at the California loading dock. Revenue and Taxation Code section 6010.5 provides that the place of sale is the place where the property was located at the time of sale. What the purchaser decides to do with the property after sale is not determinative. If the sales contract with the client provides for the property to be delivered by E--- to a carrier for shipment out of state, instead of the client taking possession within California, the interstate commerce exemption of Revenue and Taxation Code section 6396 would apply.

2B. If the client decides to leave the system in Dallas for storage instead of returning it to California, there would be no change in the incidence of tax.

If you have further questions, please contact me.

Sincerely yours,

Donald L. Fillman
Tax Counsel

DLF:sr

bc: --- --- District Administrator