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November 4, 1996

E. L. SORENSEN, JR.
Executive Director

Mr. A--- N---
Sales & Use Tax Analyst
L--- L--- M---
XXXXX --- Street
P.O. Box XXXX
--- ---, California XXXXX

L--- L--- M---
SR -- XX-XXXXXX
Transportation Charges

Dear Mr. N---:

I am responding to your letter to the Legal Division dated July 18, 1996. You ask for our opinion on whether or not L--- L--- M--- (LLM) should continue to include transportation charges in the measure of tax.

You indicate that LLM is related to L--- L--- U--- M--- C--- (LLUMC). As we understand it, however, LLM exists as a corporation in name only. It has no employees of its own and has no bank account. It is wholly owned by LLUMC. Ninety-nine percent of its business is with its parent, and it draws no profit therefrom. In your letter you confirm that LLM charges no mark-up on sales between LLM "and its customers" (presumably, its parent and its accommodation customers). You further state that "LLUMC pays for much of the expenses to operate LLM, and LLM doesn't actually generate any revenue for itself."

Based on this information, it is apparent that LLM has failed to comply with the basic requirements for obtaining and holding a seller's permit. I have attached hereto a copy of a letter dated September 3, 1993, from Robert Nunes, Deputy Director, Sales and Use Tax Department, to Mr. D--- B---, LLUMC's representative, outlining the conditions under which LLM would be permitted to maintain a separate Sales and Use Tax permit. As stated therein, among those were: (1) adding a mark-up to all sales; (2) expanding LLM's customer base; (3) invoicing all

customers; and (4) creating a separate identity with employees, accounting systems, and bank accounts. The information you supply indicates that LLM is still not charging a mark-up. In fact, you refer to LLM's transactions as "pseudo-sales." Finally, you refer to LLUMC making most of LLM's expenses and LLM not generating any revenue for itself.

LLM is still not in compliance with the terms of the Sales and Use Tax Law and Regulations, thus suggesting it is not, never was, and is not intended to be, an independent going concern. Its sole reason for existence appears to be to re-direct local sales tax revenue from the cities where the vendors' places of business are located to the City of L--- L---. For this reason, I am, by copy of this letter, referring your letter to the Sales and Use Tax Department and recommending that LLM's seller's permit be revoked.

To answer your specific question, LLM buys, as noted above, tangible personal property ex tax for resale to LLUMC. Evidently the vendors' transportation charges are included in the measure of tax which would have been due had not the instant transactions been excluded from tax as being for resale to LLUMC. Such charges, then, are one of LLM's costs of doing business included in its measure of tax when it resells the items to LLUMC. (Rev. & Tax. Code § 6012(a)(2).) LLM is thus reporting state sales tax correctly.

I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Senior Tax Counsel

JLW:sr

cc: Mr. E.L. Sorensen, Jr. (MIC:73)
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