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August 23, 1994

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Mr. R--- H. G--- III
H--- A--- Company - Tax Department
P.O. Box XXXXXX - CO/CO1/B116
--- ---, CA XXXXX-XXXX

Re: SY – XX-XXXXXX

Dear Mr. G---:

This is in response to your faxed letter dated June 20, 1994. You ask for a legal opinion on whether, or not, the government of another state is a person under Revenue and Taxation Code section 6005.

You state that H--- A--- Company (HAC) made purchases from the State of Utah. The purchases were not for resale. The State of Utah is not registered and did not collect California tax on the transaction.

The California Sales Tax is imposed upon retailers. Retail sales of tangible personal property in California are subject to sales tax unless the sale is specifically exempt by statute. (Rev. & Tax. Code § 6051.) Section 6201 of the Revenue and Taxation Code imposes a use tax on the storage, use, or other consumption in this State of tangible personal property purchased from any retailer for storage, use, or other consumption in this State. Retailer includes every seller who makes any retail sale or sales of tangible personal property, and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others and every person engaged in the business of making sales for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption. (Rev. & Tax. Code § 6015.) Seller includes every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax. (Rev. & Tax. Code § 6014.)

This means that the California sales and use tax is imposed on retail sales of tangible personal property in California and, in order to be a retailer or a seller, one must be a person as defined in section 6005 of the Revenue and Taxation Code. That section defines person, as follows:

"Person" includes any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this State, any county, city and county, municipality, district, or other political subdivision of the State, or any group or combination acting as a unit."

Further explanation is provided in Business Taxes Law Guide Annotation (BTLG Annot.) 415.0180, as follows: The University of Minnesota Press is an agency of the State of Minnesota and not a person under Section 6005 and, accordingly is not a retailer in this State for tax collection purposes. (5/18/67.)

Unless property is purchased from a person, as defined under section 6005, it cannot be purchased from a seller or retailer, as those terms are defined in California's Sales and Use Tax Law. Since Utah is not an enumerated person under section 6005, HAC's purchase of tangible personal property from the State of Utah cannot be a purchase from a California Sales and Use Tax seller or retailer. Accordingly, Utah's sale to HAC is excluded from taxation under California's Sales and Use Tax Laws, as a non-taxable transfer.

If you have further questions, feel free to write again.

Sincerely,

Pat S. Hildebrand
Staff Counsel

PH:cl

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cc: --- --- District Administrator