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April 20, 1995

Ms. H--- L---
B--- M---, Inc.
Industrial Division
XXXX --- XXth Street
P. O. Box XXXXXX
---, OK XXXXX-XXXX

Re: SC OHC XX-XXXXXX

Dear Ms. L---:

This is in response to your letter dated February 8, 1995 regarding the application of tax to your sales of tangible personal property that you drop ship into California. You state:

"We recently processed an order from the M--- Company, --- CO which was drop shipped to their customer, S--- I--- in ---, CA. I learned that they did not have a resale certificate for the State of California and I charged the tax accordingly.

"Now I have received a note from Mr. R--- K--- of M--- C--- saying that the order was not taxable as the S--- C--- was not the user or consumer of the order. This was in response to my requesting the proper certificate or documentation. He did not pay the taxes."

You have attached the letter from Mr. K---, dated January 30, 1995. In that letter, Mr. K--- states that the user and consumer of the items purchased from M--- is A--- T---, located in Minnesota. That is, M--- purchased the property from you for resale to A---, not to S---. M--- asked that you ship the items to S--- for assembly. After workers at S--- assembled the components, the assembled products were sent to the end-user in Minnesota.

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) When sales tax does not apply, such as when sales take place outside of California, the use tax, measured by the sales price of the property sold, applies to the use of property purchased from a retailer for storage, use, or other consumption in California. (Rev. & Tax. Code §§ 6201, 6401, Reg. 1620.)

As explained in our previous letters to you dated October 12, 1993 and November 16, 1993, the second paragraph of Revenue and Taxation Code section 6007 applies to transactions in which B--- M--- sells property to retailers not engaged in business in California but drop ships the property directly to the California purchaser of the out-of-state retailer if that purchaser is the consumer of the property. Under that paragraph, your sale which would otherwise be regarded as a sale for resale would be redefined as a retail sale, and you would be required to collect the applicable use tax from the California end-user, measured by the marked-up price charged to the California end-user, and pay that tax to this state.

However, our understanding of the facts in the present situation is that you sold the property to M--- and delivered it to S--- in California pursuant to M---'s instructions. S--- contracted with M--- to assemble the property and then send it to M---'s purchaser, A---, the out-of-state end-user. S--- accepted delivery from you on behalf of M---. That is, you did not deliver the property to the end-user. Therefore, the second paragraph of section 6007 does not apply.

Please note that if S--- or another California entity were to assemble the property on behalf of A--- rather than on behalf of M---, the second paragraph of section 6007 would apply. Under those circumstances, you would be required to collect the tax unless the property would not be regarded as used in California. (See Rev. & Tax. Code § 6009.1.)

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

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:plh

cc: Out-of-State Sacramento District Administrator - OH