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December 16, 1996

REDACTED TEXT

Dear REDACTED TEXT,

This is in response to your letter dated October 22, 1996 regarding the application of use tax to the use of passenger rail vehicles by REDACTED TEXT Commission. You explain:

"REDACTED TEXT Rail Commission is a Joint Powers Agency organized pursuant to § 6500 et. seq. of the California Government Code. The primary purpose of the Commission is to institute rail service between two California points. The service is estimated to begin in approximately one year. REDACTED TEXT.

"Freight Impacts

"Freight rail transport will be impacted by the service. Since REDACTED TEXT lines will be utilized for the service, scheduling and other issues have to be resolved between the Commission and the railroad. Large amounts of interstate freight will be moving on these same tracks at various times and must be accounted for.

"Passenger Movement

"The service route will connect multi-modal stations from REDACTED TEXT including stops in REDACTED TEXT, to name just a few. The REDACTED TEXT system and AMTRAK's trains will be readily accessible from our system. Ample parking will allow drivers to park and ride. A traveler could use our service as a means to travel nationally or even internationally through passenger trains, or the airports served by REDACTED TEXT.

"Freeway Impacts

"Interstate freeways will be affected by our service. The interstate freeways known as REDACTED TEXT will stand to lose traffic volume as a consequence of this service. Each commuter who has to travel to the region for work as it stands today, must drive to reach their destination. A successful REDACTED TEXT commuter rail service could eliminate thousands of trips daily on these arteries. The current level of commute hour congestion on portions of

these freeways is tremendous due to trans-REDACTED TEXT travelers [sic]. A commuter rail service would positively impact interstate trucks and busses which do not have a commuter rail option. Additionally, air pollution would be reduced with fewer automobile trips."

You believe that a use tax imposed on the Commission's use of the vehicles would be a discriminatory tax in violation of the 4R Act as applied in the case of *National Railroad Passenger Corporation v. State Board of Equalization* (N.D. Cal. 1986) 652 F.Supp. 923.

The only exemption possibly applicable to the Commission's purchase and use of the subject vehicles is Revenue and Taxation Code section 6368.5. That exemption is limited to the use of rail freight cars in interstate or foreign commerce. The Commission's use of the subject vehicles in California does not qualify for this exemption since the vehicles are not rail freight cars and since the vehicles will be used in intrastate commerce on an intrastate line. That a passenger may access an interstate carrier from the Commission's lines does not make the Commission's lines interstate in character.

We believe that the case you cite does not apply to the situation involved here. In *National Railroad*, the consumer of the passenger rail vehicles was Amtrak, an entity created by the United States Government, and Amtrak was using the subject vehicles on actual interstate lines in actual interstate commerce. As noted above, the Commission will be using the vehicles in intrastate commerce on an intrastate line.

In summary, we conclude that the Commission's use of the rail passenger cars in California is not entitled to an exemption under California law, and that California's tax on the Commission's use of the vehicles is not barred by federal law. If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Supervising Tax Counsel