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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

(916) 445-5550

February 17, 1988

REDACTED TEXT

This is in response to your letter dated January 15, 1988 regarding the application of sales tax to your sales of microfilm to a law firm REDACTED TEXT handling a case for the FSLIC. REDACTED TEXT has refused to pay you sales tax reimbursement on those sales based on the belief that they are exempt from paying sales tax since they are working for a branch of the federal government.

You were informed by Board staff that you must obtain a government remittance advice (or a government purchase order) to support the claim that you made exempt sales to the federal government. (See Reg. 1614.) You relayed this information to REDACTED TEXT who concluded that such supporting documents were not necessary. Rather, REDACTED TEXT asserts that since they work for FSLIC and you work for REDACTED TEXT, the tax exempt status extends to you as a subcontractor. REDACTED TEXT also forwarded to you a copy of a letter from the FSLIC as support for the conclusion that the FSLIC is a federal instrumentality exempt from sales tax.

We agree that the FSLIC is a federal instrumentality. Your sales directly to the FSLIC are exempt from California's sales tax. (Rev. & Tax. Code S 6381.) To support your claim that sales are exempt under this section, you must obtain, and retain, the documentation described in Regulation 1614(g). Based on the information you have provided us, we conclude that your sales were not made directly to the FSLIC and are therefore not exempt on that basis.

REDACTED TEXT is mistaken in the belief that your sales to them are exempt merely because they work for the FSLIC. The scenario under which your sales to REDACTED TEXT would not be subject to tax would be if REDACTED TEXT were purchasing the microfilm solely for purposes of resale in the regular course of business without other use of that microfilm. If such were the case, REDACTED TEXT could purchase the microfilm extax by issuing you resale certificates. This, of course, would require that REDACTED TEXT hold a valid California seller's permit. If REDACTED TEXT thereafter sold the microfilm to the FSLIC, prior to any use of the microfilm by REDACTED TEXT, that sale would be exempt from tax as a sale to a federal instrumentality.

An example of this type of transaction was considered in Lockheed Aircraft Corp. v. State Bd. of Equalization (1978) 81 C.A.3d 257. Lockheed purchased test equipment extax by issuing resale certificates. Lockheed then used the test equipment in performance of its contracts with the federal government. Lockheed's contract with the government passed title to the

equipment to the government prior to any use of it by Lockheed, and the court concluded that, under the facts presented, the government had true ownership of the test equipment and not just bare legal title. (Id. at 266.) In other words, Lockheed issued valid resale certificates and then resold the equipment to the government prior to any use of the equipment by Lockheed. Lockheed's sale to the federal government was, of course, exempt from sales tax.

In your transactions with REDACTED TEXT, I assume no resale certificates were issued to you. Your sales are therefore presumed to have been at retail (Rev. & Tax. Code § 6091), and were subject to sales tax unless specifically exempted from sales tax by statute. (Rev. & Tax. Code § 6051.) Since you sold the microfilm to REDACTED TEXT and not to the federal government, the exemption for sales to the federal government does not apply. (As discussed above, in order to claim an exemption for sales to the federal government, you must retain the necessary documentation to establish that the sales were, in fact, made directly to the federal government.)

In summary, your sales to REDACTED TEXT were not exempt sales to the federal government. Rather, they were taxable sales of tangible personal property to REDACTED TEXT for the law firm's use in its legal practice. This is analogous to the situation of construction contractors performing contracts for the federal government. A construction contractor consumes materials used in the performance of construction contracts. (Reg. 1521.) The contractor may not purchase such materials extax for resale, even though the materials are left with the federal government in the form of real estate upon completion of the contract, because the contractor is the consumer of those materials. (Rev. & Tax. Code § 6384; In re Howell (9th Cir. 1984) 731 F.2d 624; Chula Vista Electric Co. v. State Bd. of Equalization (1975) 53 C.A.3d 445.) Similarly, REDACTED TEXT is the consumer of microfilm it purchases from you for use in performance of its contract with the FSLIC, and your sales are subject to sales tax.

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

Sincerely,

David H. Levine
Tax Counsel

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