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November 15, 1994

BURTON W. OLIVER  
*Executive Director*

Mr. J. W. N---  
--- & --- L.L.P.  
XXX South --- Avenue  
--- ---, CA XXXXX-XXXX

Dear Mr. N---:

This is in response to your letter dated August 22, 1994 regarding the application of tax to satellite television services. You explain:

"Overview

"Both D--- and U--- are planning to offer direct to home (DTH) satellite television services to end-users (consumers), some of which may be located in your state. DTH services will provide the end-user with up to 150 channels of programming. The services will include basic network channels, premium channels, pay per view movies, concerts, sporting events as well as other commercial supported programming.

"Operational Aspects

"The operational aspects of D---'s and U---'s DTH service are as follows:

"Satellites, located above the continental United States will receive signals and then broadcast the signals to the end-users throughout the continental United States. The transmissions to the satellites will originate from earth stations located in jurisdictions other than your state. In some instances, such as live sporting events or concerts, our client or a third party may initiate programming from a location within or outside your state, transmit it to a primary earth station, format it and transmit to the satellites for broadcast to the customers.

"The consumer will receive the DTH service through a receiver/decoder system. This system consists of a satellite dish antenna, a set top receiver/decoder unit and a remote control which are purchased from retailers. Included with the set top receiver/decoder is a removable "access card" encoded with the information necessary to descramble the programming which the consumer purchases or subscribes. Neither D--- nor will U--- own or lease the satellite dish antenna, set top receiver/decoder unit or the 'access card'. The equipment will be the property of the consumer. The access card will remain the property of an unrelated third party.

"Independent parties have been given a license to manufacture the satellite receiver/decoder system and it will bear the manufacturer's name. The manufacturer and our clients will jointly market the service. D--- and U--- will have independent representatives marketing and soliciting on their behalf. Also, they may from time to time have employees marketing in your state.

#### "Programming

"As discussed earlier, the programming will consist of basic and premium network channels, pay per view, etc, and in some locations network programming. The consumer may elect to purchase pay per view programs (movies, sports, concerts, etc), a package of scheduled programming (i.e. basic and premium network channels) or a combination thereof.

"The consumer may order pay per view programming utilizing a remote control, or contact D--- or U---.

#### "Billing

"The consumer will be billed on a monthly basis. The access card, on an embedded chip, will contain consumer information and may include certain services purchased during the billing cycle. The receiver/decoder will in most cases be connected to a telephone line. In those cases, at a prescribed time and date the access card will call the information center at the expense of our client. The information concerning the services purchased during the billing cycle will then be extracted from the access card. An unrelated third party has been engaged to generate and send the invoices to all subscribers."

You have asked only about the charges made by D--- and U--- for transmission of signals. I assume that you understand that the sale or use in California of the satellite dish, decoder, remote control, and access card will be subject to sales or use tax. Based on the specific facts stated herein, we conclude that the transmission of signals by D--- and U--- to their

customers does not result in the sale or purchase of tangible personal property for purposes of the California Sales and Use Tax Law. Thus, we conclude that neither sales nor use tax applies to the charges for those transmissions.

I also would like to make an additional point so that you can assist us in serving you and other taxpayers and representatives in the most efficient manner. You initially wrote a letter dated May 17, 1994, and Senior Staff Counsel Ronald L. Dick responded in a letter dated July 7, 1994. You did not identify your client in your first letter. After receiving our response, you wrote a second letter which neither included new facts nor asked for clarification. Rather, the sole purpose of your second letter was to identify your client for purposes of coming within section 6596. One result of this approach is our additional workload of answering two letters when one response would have been sufficient, and this of course affects our efficiency. Even more important to you and your client is the time it took to receive a response coming within section 6596. If you had identified your client in your first letter, you would have received a letter coming within section 6596 over four months ago. I note, in this regard, that this letter is not "retroactive" to the date of Mr. Dick's letter. Rather, only this letter comes within the provisions of section 6596 (to the extent of the facts you have disclosed) and is effective only as of the date set forth above.

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

Sincerely,

David H. Levine  
Supervising Staff Counsel

DHL:cl

cc: Hollywood District Administrator