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September 30, 1994

BURTON W. OLIVER
Executive Director

Mr. J--- M---, President
S--- A--- S---, Inc.
XXXX --- Boulevard
--- ---, CA XXXXX

Dear Mr. M---l:

This is in response to your letter dated August 8, 1994. You state that the City of C--- (City) purchased three ambulances which it could not use due to an adverse court decision. Subsequently, the City sold the ambulances to S--- A--- S--- (SAS). You ask if there are any tax exemptions available to either the City or SAS.

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property, unless the sale is otherwise excluded or exempted by statute. Although the sales tax is imposed upon the retailer, the retailer may collect sales tax reimbursement (usually itemized on the invoice as "sales tax") from the purchaser if the contract of sale so provides. (Civ. Code § 1651.1.) When the sales tax does not apply, Revenue and Taxation Code section 6201 imposes a use tax on the storage, use or other consumption of tangible personal property in this state. This means that retail sales in California are subject to sales tax and if sales tax does not apply, the use tax does apply. Thus, sales or use tax normally applies to the transactions you describe and it was properly assessed on these facts.

If the vendor who sold the ambulances to the City of C--- was a California retailer, the vendor of the ambulances could file a claim for a sales tax refund on the ground that the City resold the ambulances before using them. The ambulance vendor must then, reimburse the City for sales tax reimbursement paid to the ambulance vendor.

On the other hand, if the City purchased the ambulances from an out-of-state vendor and paid use tax to the California Department of Motor Vehicles, the City could request a refund of the use tax paid to the Department of Motor Vehicles.

Regulation 1701, covering "Tax-paid Purchases Resold," may provide another potential remedy for the City, if the City is a retailer who pays sufficient sales and/or use tax to claim a deduction. In pertinent part, that Regulation provides:

"(a) **PROCEDURE IN GENERAL.** A retailer who resells tangible personal property before making any use thereof (other than retention, demonstration or display while holding it for sale in the regular course of business) may take a deduction of the purchase price of the property if, with respect to its purchase, he has reimbursed his vendor for the sales tax or has paid the use tax. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

"The deduction under the caption 'Tax-paid purchases resold' must be taken on the retailer's return in which his sale of the property is included. If the deduction is not taken in the proper quarter, a claim for refund of tax must be filed.

"(b) **CIRCUMSTANCES WARRANTING USE.** This procedure should be used in any of the following circumstances:

- (1) The retailer when making the purchase intends to use the property rather than resell it, but later resells it before making any use thereof.
- (2) The particular property is of a kind not ordinarily sold or stocked by the retailer, and not customarily covered by resale certificates given to his vendors and is the subject of an unusual sale, such as a sale for the accommodation of a customer, employee, etc.
- (3) The particular property is generally for the use of the retailer, but a small portion is incidentally resold.
- (4) Through error, sales tax reimbursement or use tax is paid by the retailer with respect to the purchase price of property purchased for resale in the regular course of business."

This means that a retailer selling property before use may deduct the purchase price of the property if the retailer has reimbursed his vendor for sales tax or paid use tax, and if the deduction is taken on the retailer's return in which the sale of the property is included. This may be done where property is purchased for use, but sold before use; where the property sold is not usually sold by the retailer; where a portion of the property is sold; or where there is erroneous payment of tax on property purchased for resale.

Based on the facts presented, it appears the City intended to use the ambulances, but resold them before use, and also that the ambulances may not ordinarily be sold by the City or covered by a resale certificate. Thus, the City may be able to take the deduction on its return, if the City is a retailer and has paid enough tax to claim a deduction.

Based on the facts presented, we are not aware of any exemption for SAS.

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

Sincerely,

Pat S. Hildebrand
Staff Counsel

PSH:cl

cc: --- District Administrator