



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-3723

December 2, 1991

Mr. J--- F. M---
Chairman and Chief Executive Officer

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XXXX --- Road, Suite XXX
---, CA XXXXX

Dear Mr. M---:

This is in response to your letter of November 19, 1991.

You have asked questions in regard to our memorandum to the Petitions Unit of August 31, 1982. That memorandum concerned the interpretation of Revenue and Taxation Code section 6401.

Gross receipts are required to be included in the measure of sales tax if the gross receipts are other than exempt under the Sales and Use Tax Law. If the seller is properly liable for sales tax, the purchaser is exempt from use tax.

Section 6091 is not applicable to a purchaser asserting an exemption pursuant to section 6401. While gross receipts are generally presumed subject to the sales tax, it does not follow that such gross receipts are legally required to be included in the measure of sales tax. The presumption is a presumption as to fact (the sale was at retail), not a presumption as to the meaning of any provision of law.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

GJJ:sr