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**STATE BOARD OF EQUALIZATION**

November 22, 1971

Dear \_\_\_\_\_,

In your inquiry of November 21, 1971, you ask our opinion as to whether a wholesale grocery company, such as yourself, may purchase certain invoices for resale.

We understand you not only use these invoices to list the products you sell to your customers but also supply your customers a copy upon the delivery of the property. You contend that since you must supply the invoices to your customers you are selling rather than consuming them. We disagree.

The sales tax applies to retail sales of tangible personal property. A retail sale is defined as a sale for any purpose other than resale in the regular course of business. It is our opinion that you are using the invoices as a part of your accounting system and primarily for a check on the flow of goods. Accordingly, the invoices are purchased for some purpose other than resale in the regular course of business, and you may not purchase them for resale.

For a moment, however, let us assume that your theory of resale is correct and therefore you can issue a resale certificate to your invoice supplier. Accordingly, under your theory, when you "sell" (issue) the invoice to your customer that transfer will be subject to sales tax. Your customers could not purchase it for resale since they are not going to resell the invoice. The next question would be what is the measure of tax. Since a person normally makes a profit on his sales there is a possibility that we would have to compute a markup on the transfer of the invoice. In this case, the cost of the invoice plus the assumed markup would be regarded as the taxable measure.

Summarily, we regard you as the consumer of the invoice and not the retailer.

Very truly yours,

Glenn L. Rigby  
Tax Counsel

CLR:lb