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April 28, 1993

Mr. H--- L---
Controller
B---, Inc.
XXXX East --- Circle
--- ---, CA XXXXX

Re: SR -- XX-XXXXXX

Dear Mr. L---:

This is in response to your letter of December 21, 1992, wherein you stated that your P--- machine was received in September 1992, but has not yet functioned. You had previously anticipated using it in California for several months before shipping it to Illinois. It is now anticipated that it will be tested in California for about a month before shipping to Illinois. You inquire as to whether a California sales or use tax would still be due.

Revenue and Taxation Code section 6201 imposes a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state. Revenue and Taxation Code section 6246 provides that it shall be presumed that tangible personal property shipped or brought to California by the purchaser was purchased from a retailer for storage, use, or other consumption in this state. Once the property qualifies for the use tax, there is no exemption for a "short term" use.

Revenue and Taxation Code section 6406 provides for a credit for sales or use taxes paid to another state on the same property. Most states give a similar credit for sales or use taxes paid to another state.

Revenue and Taxation Code section 6009.1 provides an exemption for property which is retained in California for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state. If the sole use of the property within California is testing prior to its productive use, and the property is subsequently shipped out of state and its productive use

is solely outside of California, the exemption requirements of section 6009.1 are met. (Bus. Taxes Law Guide Annot. 570.1180.) However, if the testing is not limited to a pre-productive test of the machine itself, but includes practice runs for such purposes as "testing" for its suitability for a particular purpose, or an operator's capabilities, the use tax will apply. (BTLG Annot. 570.0400.)

If you have further questions, please contact me.

Sincerely yours,

Donald L. Fillman
Tax Counsel

DLF:wk