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 Executive Director

October 16, 1996

Mr. D--- W. B---
 The D--- B--- F---
 XXXX --- --- Road
 --- ---, CA XXXXX

Re: A--- X

Dear Mr. B---:

Your letter dated August 14, 1996, to Mr. Chuck Harris, Return Analysis Section, has been referred to me for response. You ask whether sales tax applies to the sale of "A--- X," a sailplane sculpture, by artist D--- S--- to the D--- B--- F---. You state that: "The plane is located at the airport for as long as it is desired, certainly for the foreseeable future, at no charge to the public or city on public display as provided. It is on display daily all throughout the year."

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by the gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax, measured by the sales price, applies to the use of tangible personal property purchased from a retailer for storage, use, or other consumption in California, unless the use is exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.)

Sales and Use Tax Regulation 1586(c)(1) (copy enclosed), which interprets Revenue and Taxation Code section 6365(a), provides that tax applies to the sale or use of original works of art unless, among other requirements, the original works of art are purchased by:

1. this state, or any city, county, city and county, or other local governmental entity in this state;
2. any nonprofit organization which operates a public museum under contract for such governmental entity;
3. any nonprofit organization qualifying for exemption from state income tax pursuant to Section 23701d of the Revenue and Taxation Code. The work of art must be purchased for display in a museum either operated by the purchaser or by another nonprofit organization which qualified for exemption pursuant to Section 23701d. The museum in which

the art is displayed must be open to the public regularly for not less than 20 hours per week and for not less than 35 weeks of the calendar year; or

4. any person for donation to the above governmental entities or nonprofit organizations. To qualify for exemption from the tax under this subparagraph, donated works of art must be delivered by the retailer of the art directly to the donee pursuant to the instructions of the buyer-donor. Written evidence of transfer of title to the works of art from the buyer-donor to the donee must be maintained by the retailer and the buyer-donor to support the exemption.

Our understanding is that the D--- B--- F--- has title to A--- X, which is currently being displayed at the --- --- Airport, and that the foundation did not purchase A--- X for donation to any of the governmental entities or nonprofit organizations listed above. We also assume that the D--- B--- F--- does not operate a public museum under contract of a state or local governmental entity and that A--- X was not purchased for display in a museum. Under these facts, tax applies to the sale of A--- X to the D--- B--- F---.

If you have any further questions, please write again.

Sincerely,

Sophia H. Chung
Tax Counsel

SHC:rz

Enclosure: Sales and Use Tax Regulation 1586

cc: Mr. Chuck Harris (Mic: 35)

R--- D--- S---

D--- S---

XXXX N. --- --- Avenue

---, California XXXXX

--- District Administrator (--)