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February 3, 1994

Ms. [W]
Tax Analyst
[B]
XXXX --- ----
--- ---, California XXXXX

Re: S- -- XX-XXXXXX
Bradley-Burns Local Tax
Transactions and Use Tax
Place of Sale or Use

Dear Ms. [W]:

It has come to my attention that we may have given you incorrect advice as to the allocation of local use tax in the letter which Senior Tax Counsel John G. Abbott wrote to you on this subject on March 31, 1989, in response to your letter to him of February 16, 1989. Your letter briefly described [B]'s operation and posed eight scenarios for which you requested advice as to the allocation of local tax and to which district tax applied. I have attached a copy of Mr. Abbott's letter for your ease of reference.

We have orally altered this response given to your Question 5 in discussions with our staff. I am writing this to notify you of the correction.

Question 5 reads as follows:

“A customer in San Diego contacts the mail order division in Santa Clara County to place an order. The product is shipped from our warehouse outside California directly to the customer located in San Diego County. What, if any, local tax applies?”

We answered that local tax should go to Santa Clara County, and district tax should go to San Diego County. The advice given you with regard to the allocation of local tax is in error.

Since the goods are located out-of-state at the time of the sale, the only tax that can apply is the use tax. (§§ 6010.5, 6017.) The place-of-sale rules for allocation of local tax do not apply to transactions subject to use tax. The tax consequences are determined by the place of first functional use. In this case, then, you should allocate local use tax to San Diego County on a countywide unallocated basis. You should continue to report district use tax to the taxing district(s) in operation in San Diego if you are engaged in business there pursuant to Regulation 1827.

Please begin allocating local use tax to San Diego County in this situation beginning with this quarter. I apologize for any inconvenience our error may have caused you.

I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es
Enclosure: Reg. 1827