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**STATE BOARD OF EQUALIZATION**

November 12, 1997

Re: Sale of Furniture and Equipment

Dear Mr.

This is in response to your letter dated September 19, 1997 regarding the application of sales tax to a sale of excess furniture and equipment. You state:

--- a Delaware corporation, received the Certificate of Qualification # --- doing business in California in June, 1997.

"Our business is in the design and manufacturing of satellite television integrated receivers and decoders. Basically our people do the engineering design, out-source the manufacturing, and then sell the finished units to wholesale customers.

"In the course of the engineering design and prototyping, our people have to depend on sophisticated electronic equipments. Due to unforeseen market changes and difficulty to get high skill personnel, we have found that we need to reorganize and dispose some of the furniture and expensive equipments that are now III excess.

"These furniture and equipments were bought in the last 60 days and their sales tax has been paid in full.

"We feel that such a sale should qualify as an "occasional sale", i.e. exemptable from sales tax in view of the following:

“-Our company is in a business of designing, manufacturing, and selling satellite television integrated receiver and decoder systems and not in selling such furniture and equipments.

“-This is a one time event, i.e. getting rid of identifiable excess furniture and equipments."

Sales tax is imposed on a retailer's retail sale of tangible personal property in this state, measured by a percentage of gross receipts, unless the sale is specifically exempt by statute. (Rev. & Tax. Code § 6051.) Although sales tax is imposed on the retailer, the retailer may collect sales tax reimbursement (usually itemized on the invoice as "sales

tax") from the purchaser if the contract of sales so provides. (Civ. Code § 1656.1.) When sales tax does not apply, use tax applies to the storage, use or other consumption of tangible personal property purchased from any retailer for the storage, use or other consumption in this state, measured by a percentage of the sales price, unless that use is specifically exempt by statute. (Rev. & Tax. Code §§ 6201, 6401.) "Gross receipts" or "sales price" generally include all amounts received with respect to the sale of tangible personal property, with no deduction for the cost of materials used, labor or service costs, or other expenses of the retailer, unless there is a specific statutory exclusion. (Rev. & Tax. Code §§ 6011, 6012.)

Certain occasional sales are exempt from both the sales and the use tax. (Rev. & Tax. Code § 6367.) As relevant to your inquiry, the term "occasional sale" is defined in part in Revenue and Taxation Code section 6006.5(a) as follows:

"A sale of property not held or used by a seller in the course of activities for which he or she is required to hold a seller's permit or permits or would be required to hold a seller's permit or permits if the activities were conducted in this state, provided the sale is not one of a series of sales sufficient in number, scope, and character to constitute an activity for which he or she is required to hold a seller's permit or would be required to hold a seller's permit if the activity were conducted in this state."

A seller is a person who is engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are subject to sales tax. (Rev. & Tax. Code § 6014). A is in the business of designing, manufacturing and selling satellite television integrated receivers and decoders to wholesale customers. That is, --- is a seller of tangible personal property, and it therefore holds a seller's permit from the Board of Equalization. According to your letter of September 19, 1997 --- depends on sophisticated electronic equipment to carry out its business. That equipment, as well as the furniture that --- intends to sell, appears to have been used in the course of the company's business. --- will be selling tangible personal property (equipment and furniture) that it held or used in the course of activities for which it was required to hold a seller's permit. That sale therefore does not qualify as an occasional sale under section 6006.5(a). If the sale is at retail, it is subject to sales tax.

If you have further questions, please feel free to write again.

Very truly yours,

Janice L. Thurston  
Tax Counsel

JLT/cmm

cc: District Administrator