

**STATE BOARD OF EQUALIZATION**

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February 22, 1989

Mr. R--- E. C---
B---, P--- & H---
Attorneys at Law
--- Street ---
--- --- Plaza
--- ---, CA XXXXX

Re: D--- L---, Inc.
P--- C--- Corporation

Dear Mr. C---:

Your February 17, 1989 letter to me requests our opinion that the following described sale of assets in a single transaction will be an exempt occasional sale under California Revenue and Taxation Code Sections 6006.5(a) and 6367. D--- L---, Inc. (D---) is engaged in the business of attempting to develop a new computer related product. The business is still in the research and development stage and no revenue has been received. Delta now proposes to sell its assets to P--- C--- Corporation (P---). The principal assets to be sold are work in progress on software, such as software for use in connecting a pocket sized computer to a modem. D--- does not hold a seller's permit. It is feasible, but rather wasteful, to transmit the work in progress electronically from D--- to P--- and the parties would rather transfer the work in progress in the form of tangible personal property if they may do so free from sales and use tax.

Given the above facts, we believe that D---, while still in the research and development stage, is not required to hold a seller's permit. Whether or not D--- would ever have been required to hold a seller's permit is speculative, depending on the success of its research and development and whether it progressed to the production phase. Therefore, in our opinion, if D--- now sells its work in progress in a single transaction to P---, that sale will be exempt from sales and use tax as an occasional sale within Sections 6006.5(a) and 6367.

Sincerely,

Donald J. Hennessy
Senior Tax Counsel

DJH:jb