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July 20, 1993

Mr. G--- W. M---
K--- & A---
XXX --- --- Street, XXth Floor
--- ---, CA XXXXX-XXXX

Dear Mr. M---:

This is in reply to your July 29, 1993 letter regarding the application of sales tax to the transaction you described as follows:

“Our client is a California corporation (the ‘Company’) which is engaged in the businesses of manufacturing and distribution and has a California seller’s permit. The company proposes to transfer certain of its assets, including equipment and other tangible personal property associated with its manufacturing business and its name and logo, to a new California corporation to be formed by the Company (‘Newco’) in exchange solely for all of the outstanding stock of Newco. This transfer is hereinafter referred to as the ‘Exchange,’ and the date of the Exchange as the ‘Exchange Date’.

“The Company will retain other assets, including those associated with its distribution business, which it will continue to operate. In that connection, the Company will license back from Newco the right to use the name and logo. None of the Company’s indebtedness will be assumed by Newco, and none of the assets transferred to Newco will be transferred subject to any indebtedness. The Company will not receive from Newco in connection with the Exchange any cash, notes, assumption of indebtedness or property other than the stock of Newco.

“After the Exchange Date, the Company may sell some or all of its outstanding stock in Newco to one or more buyers, some or all of whom may now be, or be related to, direct or indirect owners of the stock of the Company. No agreement concerning the sale of such stock has been entered into, and no such agreement will be entered into until after the Exchange Date, if at all.”

You go on to state that Newco will be a commencing corporation and the assets, including equipment and other tangible personal property, which will be transferred by the Company to Newco will be transferred in exchange solely for the first issue stock in Newco.

Assuming that the Company has a valid business purpose in structuring the transaction as you described it, that is, the purpose is not merely to avoid payment of sales tax on a retail sale of equipment, we agree with your conclusion that neither sales nor use tax applies to the Company's transfer of the assets to Newco, and neither sales tax nor use tax applies to the Company's sale of Newco's stock after the exchange date.

Very truly yours,

Ronald L. Dick
Senior Staff Counsel

RLD:plh