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October 3, 1995

X-----

Re: Sales of Pollution Control Devices to State Governmental Agencies

Dear X-----,

This is in response to your letter dated July 31, 1995, in which you inquire about the application of sales tax to sales of pollution control systems to California governmental agencies.

In your letter you explain that your company, X-----, manufactures and installs water and air pollution control systems. You state that various agencies involved with park and recreational water facilities use X----- water pollution control system, which is used to control nutrient loading of bodies of water to alleviate the accumulation of harmful bacteria. Your specific inquiry is whether sales of these systems to California governmental agencies are considered to be sales or purchases for California Sales and Use Tax purposes pursuant to Revenue and Taxation Code section 6010.10.

Retail sales of tangible personal property within this state are subject to sales tax unless specifically exempt by statute. (Rev & Tax. Code § 6051.) When the sales tax does not apply, use tax is imposed on the sales price of property purchased from a retailer for use, storage, or other consumption in California, unless the use is specifically exempt from tax by statute. (Rev. & Tax. Code §§ 6201, 6204.)

Section 6010.10 provides that a "sale" or "purchase" for California Sales and Use Tax purposes does not include the transfer of property constituting either "any project or pollution control facility to the California Pollution Control Financing Authority [(Authority)] **by any participating party** (emphasis added)" or a transfer of such property **by the Authority to any participating party**, if the transfers are made pursuant to Division 27, commencing with section 44500 of the California Health and Safety (H & S) Code. This division establishes the Pollution Control Financing Act which was enacted to provide an alternative method of financing and establishing pollution control facilities. (H & S Code §§ 44501 , 44502.) No project is eligible for financing unless it is certified by an appropriate state or federal authority. (H & S Code §44533.)

The application of Section 6010.10 is limited to transfers between the Authority and a "participating party"; e.g., a sale leaseback between the Authority and the participating party. Section 44506 of the Health and Safety Code defines a "participating party" as any

"person, company, corporation partnership, firm or other entity or group of entities engaged in operations within this state which requires financing pursuant to the terms of [the Pollution Control Financing Act] to aid and assist in the control or elimination of pollution of the environment of the state."

Unless you qualify as a participating party pursuant to Health and Safety Code section 44506, and the agency you are transferring the system to is the California Pollution Control Financing Authority, your transfers of pollution control systems to California governmental agencies do not qualify as a transfer pursuant to Section 6010.10. Thus, your sales of tangible personal property in this state to these agencies will be considered a "sale" and "purchase" and sales tax will apply. Accordingly, you owe sales tax on your transfers of pollution control systems whether or not you collected sales tax reimbursement from the purchaser. However, since your sales are taxable, you are entitled to collect sales tax reimbursement from the purchasers if your contract of sale so provides. (Civ. Code §1656.1.)

If you have any further questions, please feel free to contact this office again.

Sincerely,

Patricia Hart Jorgensen  
Senior Staff Counsel

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