

395,0004

(916) 445-3723

February 29, 1984



Dear

This is in response to your letter of January 24, 1984.

You have sought our opinion as to the California sales and use tax implications of the acquisition of certain machinery and equipment for the proposed joint venture between [redacted] and [redacted]. The joint venture will be a corporation and will be owned 50% by [redacted] and 50% by [redacted].

In order to enable the proposed joint venture to commence operations in December 1984 as currently scheduled, orders for long lead-time machinery and equipment have been placed and will continue to be placed in the future. Some of this equipment will be purchased by [redacted] from U.S. vendors and some will be purchased by [redacted] from Japanese vendors.

*ie: common equity stock, not stock issued after the corporate organization.*

It is your conclusion that the transfer of equipment by [redacted] to the joint venture corporation solely in exchange for capital stock would be a nontaxable transfer. That is, [redacted] would not have to pay sales tax with respect to the transfer nor would the corporation have to pay use tax. These conclusions are correct because the transfer in question is neither a "sale" under Revenue and Taxation Code, Section 6006, nor a "purchase" under Revenue and Taxation Code, Section 6010. See Regulation 1595, "Occasional Sales - Sale of a Business - Business Reorganization," paragraph (b)(4), copy enclosed for your reference.

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It is possible that \_\_\_\_\_ could have a California use tax liability with respect to the equipment in question. \_\_\_\_\_ would be regarded as having purchased the equipment for use in this state and as having used the equipment in this state if title to the equipment were to pass from \_\_\_\_\_ to the joint venture corporation in this state. For California use tax purposes, \_\_\_\_\_ would not be regarded as having resold the property in the regular course of its business but as having disposed of the property in a transaction (the contribution transaction) which was not a sale. See Revenue and Taxation Code, Section 6007. Thus, if the ownership transfer occurs in California, \_\_\_\_\_ will owe use tax measured by its purchase price of the property. If, however, ownership passes to the joint venture corporation outside this state, that is, if the transfer constituting the contribution occurs outside this state, then \_\_\_\_\_ will have no use tax liability because it will not have used or consumed the property in this state. As previously noted, the corporation would have no liability because it would not have acquired the property by purchase.

You further conclude that tax would apply to the extent the transferor receives other consideration, such as cash, evidence of indebtedness, or assumption of liability of the transferor. This conclusion is correct, to the extent there is consideration for the transfer of title, the transaction is a sale under the California law, and it is a retail sale subject to sales or use tax, as appropriate.

If we may be of further assistance, please feel free to contact the undersigned directly.

Very truly yours,

Gary J. Jugum  
Assistant Chief Counsel

GJJ/jkr

Enclosure