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STATE OF CALIFORNIA

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March 1, 1994

BURTON W. OLIVER
Executive Director

Dear :

This is in reply to your January 21, 1994 letter regarding the application of sales tax to transfers of assets to a commencing corporation. You provided the following facts:

"The transferor company is dropping assets into a new subsidiary, a commencing corporation, in an IRC §351 transaction. The transfer of these assets to the subsidiary is solely for first issue stock of such commencing corporation. No debt will be transferred, assumed, or assigned, nor will the transferor receive other consideration from the transferee. The transferor is a lessee of certain real property leases which will be assigned to the commencing corporation, with the commencing corporation prospectively paying the rent under the remaining lease term. No release from the transferor will be sought."

Given this information, you asked whether the Board would consider the assignment of the lease as taxable consideration. We do not understand the significance of your statement that, "no release from the transferor will be sought."

We believe that when a transferee assumes a contingent liability of a transferor, the transferee has given consideration for the property transferred. However, where the transferee incurs liabilities which will arise after the transfer of tangible personal property, and are for benefits received by the transferee after that transfer, the transferee has not assumed indebtedness within the meaning of Sales and Use Tax Regulation 1595, subdivision (b)(4). If the transferor's lease agreement requires rental payments to be made in advance, then the transferee's liability for a rental payment is for a benefit (the

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next month's rent) the transferee receives after the transfer. We do not believe that the transferee's assuming the lease under those circumstances results in a taxable consideration for the transfer of tangible personal property.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

bc: Sacramento District Administrator - KH