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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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January 31, 1995

BURTON W. OLIVER  
Executive Director

Dear Ms

This is in response to your letter dated October 27, 1994 requesting an opinion concerning the sales and use tax consequences of certain transactions involving TP. A review of our central files indicates that TP holds a use fuel permit ( ) with the California's State Board of Equalization, but does not hold a California seller's permit with the Board. I assume from this that TP does not make retail sales of tangible personal property in the state of California.

You write that TP is a closely held corporation headquartered in Colorado. TP is engaged primarily in the business of leasing truck terminals located throughout the United States. Three related family groups currently own the stock of TP: the A shareholders, the B shareholders, and the C shareholders. It is proposed that a series of transactions occur to separate TP as follows.

First, the C shareholders will sell all shares of their TP stock to TP for cash and notes. Second, TP will create a new subsidiary corporation named XYZ Corporation ( ), and TP will own all of the stock of XYZ. TP will transfer certain of its truck terminals and other assets to XYZ. All assets transferred from TP to XYZ will be real property; no tangible personal property will be transferred. Third, all of the stock of XYZ will then be distributed by TP to the B shareholders in exchange for all of their shares of TP stock.

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### Discussion

Under the California Sales and Use Tax Law, a retailer who makes sales of tangible personal property at retail in this state must pay sales tax for the privilege of selling property at retail in California, unless excluded or exempted by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax applies to a purchaser's use of tangible personal property purchased from a retailer for use in California. (Rev. & Tax. Code §§ 6201, 6401.) A sale of shares of stock in a corporation is not considered to be a sale or purchase of tangible personal property for purposes of the Sales and Use Tax Law. (Business Taxes Law Guide Annot. 395.1250 (5/8/87).)

First, I address the sale by the C shareholders of their TP stock to TP for cash and notes. Corporate shareholders do not own the assets of the corporation. Rather, the corporation owns the assets of the corporation, and the shares represent an ownership interest in the corporation itself. Thus, when a shareholder sells its shares of the corporate stock, although the assets of the corporation may include tangible personal property, the sale of the stock is not a sale of tangible personal property for purposes of the Sales and Use Tax Law. (See BTLG Annot. 395.1250 (5/8/87).) Therefore, the sale of TP stock by the C shareholders to TP is not a taxable sale under the California Sales and Use Tax Law.

Second, I address the creation of XYZ by TP with TP owning all the XYZ stock, and the transfer of various real property assets of TP to XYZ. Since the transfer of assets from TP to XYZ involves a transfer of real property only (as opposed to tangible personal property), there can be no tax liability under the California Sales and Use Tax Law because that law imposes tax only on a retail sale or use of tangible personal property, not of real property. (Rev. & Tax. Code §§ 6201, 6401. Compare with Reg. 1595(b)(4).)

Third, I address the distribution of the stock of XYZ by TP to the B shareholders in exchange for all the B shareholders' TP stock. As discussed in the first transaction (the sale of TP stock by the C shareholders), a sale of stock is not a sale of tangible personal property. Therefore, the exchange of the TP stock for the XYZ stock is not a taxable sale under the California Sales and Use Tax Law.

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I hope this information is of assistance. Please write again if we may answer any further questions.

Sincerely,

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Sharon Jarvis  
Staff Counsel

SJ:es

cc: Administrator,