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April 8, 1997

E. L. SORENSEN, JR.
Executive Director

Ms. J--- K. I---
H--- E--- W--- & M---
Attorneys
XXX West ---, XXth Floor
--- ---, CA XXXXX

Re: ---, Inc.

Dear Ms. I---:

This is in reply to your letter of April 1, 1997. You have sought our opinion on behalf of your client, X, Inc. ("X"), as to application of the California Sales and Use Tax Law to certain payments to be made to your client for online service.

We understand that X is a California corporation with its headquarters located in --- --- County. X provides an online service much like a classified section of a newspaper to its customers. Potential users of X's services register online with X as buyers or sellers. X's customers are located in California, other parts of the United States and overseas.

X does not charge for registration or impose an online service charge. A prospective seller pays X a fee to place an advertisement online for sale of an item. X receives extra fees to "feature" or "bold" a seller's item. X does not edit a seller's advertisement. The seller states in the advertisement the minimum sales price for the item and that bidding is to be open for a period of 3, 7 or 14 days. Prospective buyers then electronically place "bids" on the item. X does not have authority to nor does it accept or reject bids on behalf of the seller.

If the item advertised sells, X receives a percentage (2.5-5%) of the selling price. X does not provide product warranties, an escrow, or otherwise become involved in the transaction between the buyer and the seller. The buyer and the seller make arrangements between themselves for both payment and shipment. X never takes possession of the property advertised and has no authority to transfer title of the property from the seller to the buyer.

X assumes that an item receiving at least one valid bid will sell. X bills sellers monthly for the prior month's activities. Billing is done by e-mail and payment is made by check, money order, or credit card.

X does not deliver any computer diskettes, manuals or other tangible personal property to potential buyers or sellers. A potential buyer or seller, who accesses X's web site, receives online instructions on how to use X's services. A potential buyer or seller will download electronically the software necessary to use X's services. This software is neither purchased nor leased by the buyer or seller.

We are in agreement with your conclusion that X is conducting a service which is not subject to tax under the California Sales and Use Tax Law. Rev. & Tax. Code § 6006.

We are further in agreement with your conclusion that X has no obligation to pay or collect California sales or use tax which may be imposed upon a sale between a seller and buyer using X's online service. X is neither selling or purchasing tangible personal property, nor is it acting as an auctioneer or consignor with respect to property owned by another. Rev. & Tax. Code §§ 6006, 6015 and 6019; Sales and Use Tax Regs. 1565 and 1569.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

GJJ:sr

cc: San Diego District Administrator