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April 8, 1994

Mr. R--- D---
Supervisor
State & Local Taxes
N--- C--- Company
One --- Center
---, II XXXXX-XXXX

BURTON W. OLIVER
Executive Director

Re: **Application of Sales Tax to Contract for Water
Treatment With K--- N--- C--- Company
Account No. SZ --- XX-XXXXXX**

Dear Mr. D---:

This is in response to your letter dated February 9, 1994 in which you request our opinion as to the application of tax to N--- C--- Company's (N---) contract with K--- P--- Co. (K---) for "water treatment services". N--- believes that the contract with K--- is one for a non-taxable service rather than a contract for a taxable sale of tangible personal property.

Attached to your letter was a purchase order describing in detail the water treatment program. The program is divided into two types: the N--- Administered Program and the Self Administered Program. Under both programs, N--- is to provide the following:

- 2-4 service visits/month
- complete testing of cooling towers each month
- complete testing of boilers each month
- complete testing of closed loop each month
- Microbiological testing of cooling towers
- 90 day corrosion coupons for each tower and closed loop

- chiller efficiency studies
- boiler efficiency studies
- condensate iron studies
- OSHA training for operators
- testing and control training for operators
- available for equipment inspections
- analytical laboratory services as needed.
- special studies as needed.
 - softener elution studies
 - boroscope inspection capabilities
 - ultrasonic flow detector studies
 - Metallorgraphic analyses
- quarterly business reviews
- return of all chemical containers
- deliver, distribute and feed all N--- chemicals

In addition to those items listed above, there is a one time \$500 charge for test kits and solution. This separately stated charge for the sale of the kits is subject to sales tax. The remainder of the charges relate to the two types of water treatment programs consisting of the items listed above.

Under the "Self Administered Program", N---'s responsibilities are identical except as to the last one listed above. Under this program, N--- delivers the chemicals only. K--- is responsible for distribution and feeding of all N--- chemicals. There is a lumpsum charge for the water treatment program at each of the various K--- locations and charges for the chemicals are not separately stated.

If N--- were to separately state the charges for the chemicals, under either of the programs, we would regard the contract as including a sale of tangible personal property subject to sales tax. However, under the facts as related in your letter, we regard only the contract for

the Self Administered Program to include a sale of the chemicals. Sales tax is due on the sale of the chemicals measured by the list price (the amount usually charged for the sale of the chemicals alone). In the N--- Administered Program, we regard this contract to be a non-taxable contract for services rather than a contract for the sale of the chemicals. Since you are regarded as consuming the property you incidentally transfer to your customers under this contract, the sale of such property to you is subject to sales tax, or your use of the property is subject to use tax.

Our conclusions herein are based on the assumption that neither the service element nor the chemical element of the contracts is insignificant. If this assumption is incorrect, our conclusions would differ. If you have any further questions, please do not hesitate to write again.

Sincerely,

Sukhwinder K. Dhanda
Staff Counsel

SKD:plh

cc: Out-of-State Chicago Area Office