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(91) 45-3723

November 6, 1990

Dear

This is in response to Mr. [redacted] letter to us of November 1, 1990, requesting, on your behalf, our opinion regarding the application of the California Sales and Use Tax Law to certain proposed sale-leaseback transactions.

We understand that [redacted] ("Investment") desires to borrow money by means of a [redacted] cross-border lease. [redacted] is a Washington corporation, taxpayer identification number [redacted] whose address and telephone [redacted]

To facilitate this transaction, a wholly owned subsidiary of Investment, [redacted] (" [redacted] "), will sell certain of its paper-making machinery (the "Equipment") to Investment for an amount equal to the fair market value of the Equipment. [redacted] is a [redacted] taxpayer identification number [redacted] whose address and telephone number are [redacted]

The sale of the Equipment by [redacted] to Investment will be followed by a leaseback of the Equipment from Investment to [redacted]. The leaseback will provide an option to purchase the equipment at the end of the lease term for an amount equal to \$1 and the lease rentals will be set at \$1 per year for the entire term of the lease.

After completion of the sale leaseback between [redacted] and Investment, Investment will enter into the [redacted] cross-border lease transaction. Under the [redacted] cross-border lease, Investment will sell the Equipment to [redacted] and lease the Equipment back for a period of nine years.

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(is a subsidiary of . . . At the end of the term of the lease Investment will have an option to acquire the Equipment for payment of the lesser of 10% of the original purchase price or the fair market value of the equipment at that time. The economic effect of the (cross-border lease is a borrowing by Investment, secured by the Equipment, at an interest rate approximately 100 basis points below Investment's normal borrowing rate.

Based solely on the representations of fact made in the request for written advice dated November 1, 1990, we are of the opinion that, under our Regulation 1660(a)(2)(A) and (a)(3)(A)1, the Investment sale-leaseback transaction described herein will be regarded as a financing transaction which is not subject to California sales or use tax. Because the sale-leaseback between and Investment is regarded as a financing transaction, Investment's interest in the equipment is that of a secured lender. You cannot sell what you do not own. Thus, the (cross-border transaction is regarded as merely a sale and leaseback of the lender's (i.e., Investment) interest in the transaction, and is also not subject to California sales or use tax, because the transaction does not involve a sale or a lease of tangible personal property under the California Sales and Use Tax Law.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

GJJ:sr