



STATE BOARD OF EQUALIZATION

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916/445-6493

January 28, 1985

Mr. R--- A. H---
H---,--- & ---, Inc.
XXX ---, Suite XXX
---, California XXXXX

Dear Mr. H---:

Your letter of November 13, 1984 has been referred to me for reply. Your letter states as follows:

“I have a question relating to the sale of an ongoing business to an unrelated party.

“Generally, if the stock of a corporation is sold, there is no sales tax implications under Rev. & T.C. Sec. 6006.5. If the assets of a business are sold, the amount allocable to tangible personal property is subject to sales tax.

“What would happen if stock of a corporation was sold, and the buyer elected under Rev. & T.C. §24518 to treat this as an asset purchase? Would the amount allocated to tangible personal property still be treated for sales tax purposes as a sale of stock, or would it be treated as a sale of assets? Since §24518 is an income tax election.[sic] I am not sure if it has an effect on sales taxes.”

Revenue and Taxation Code Section 24518 provides, in pertinent part, that:

“(a) For purposes of this part, if a purchasing corporation makes an election under this section (or is treated under subdivision (e) as having made such an election), then, in the case of any qualified purchase, the target corporation--

“(1) Shall be treated as having sold all of its assets at the close of the acquisition date in a single transaction to which Sections 24512, 24513, 24514, and 24517, apply, and

“(2) Shall be treated as a new corporation which purchased all of the assets referred to in paragraph (1) as of the beginning of the day after the acquisition date.

“(b)(1) For purposes of subdivision (a), the assets of the target corporation shall be treated as sold (and purchased) at an amount equal to--

“(A) The grossed-up basis of the purchasing corporation’s stock in the target corporation on the acquisition date.

“(B) Properly adjusted under regulations prescribed by the Franchise Tax Board for liabilities of the target corporation and other relevant items.”

California Sales and Use Tax Law imposes a tax on the sale or use of tangible personal property in this state. Corporate stock is considered to be intangible personal property rather than tangible personal property. Therefore, the sale or purchase of stock in a corporation is not subject to tax, since such a transaction is outside the provisions of the Sales and Use Tax Law. Revenue and Taxation Code Section 24518 permits a corporation to elect to treat for income tax purposes only, its purchases of the assets of the target corporation. There results from this election under 24518 an increase or step-up in the basis of the target corporation’s assets to an amount that is equal to the cost of the purchased stock, i.e., the assets of the target corporation may have been “grossed up.” Apparently, this election made under Section 24518 does not result in, nor does it require an actual transfer of title in the assets of the target corporation from the target corporation to either another separate entity or to the buyer corporation.

Therefore, assuming there is no transfer of title in the assets of the target corporation to another separate entity or person when the election is made by the buyer of stock under Section 24518, it is our opinion that the sale and purchase of the target corporations’ stock will be treated for purposes of the Sales and Use Tax Law as a nontaxable transfer of stock rather than a sale of tangible personal property which is subject to tax.

If you have any further questions, please write this office.

Very truly yours,

Charles J. Graziano
Tax Counsel

CJG:ba