



STATE BOARD OF EQUALIZATION

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May 9, 1996

Mr. L--- K---
 H--- M---, Inc.
 XXX East M--- Avenue
 Z---, -- XXXXX-XXXX

**Re: H--- M---, Inc.- SZ --- XX-XXXXXX
 P--- D---, Inc. - SC --- XX-XXXXXX**

Dear Mr. K---:

This is in response to your letter dated March 15, 1996 regarding the application of tax to certain transfers of tangible personal property. You state:

“H--- M---, Inc., (HMI) is a --- corporation qualified to do business in California and has been issued California sales tax registration number SZ --- XX-XXXXXX. HMI owns 100 percent of P--- D---, Inc., (P---) which is also a --- corporation qualified to do business in California. P--- has been issued California sales tax registration number SC --- XX-XXXXXX.

“HMI owns some depreciable personal property (machinery and equipment, office furniture and fixtures, and computers) with a net book value of about \$1.2 million located at its plant in R---, California. HMI has paid California sales or use tax on this depreciable personal property. The fair market value of the depreciable personal property is not known.”

You state that HMI is contemplating transferring the property to P--- as a contribution to capital for which HMI would receive no consideration. You indicate that if such a contribution to capital would be considered by us to be subject to tax, then rather than making such a contribution, HMI might instead lease the property to P---.

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, the use tax, measured by the sales price of the property sold, applies to the use of property purchased from a retailer for storage, use, or other consumption in California unless such use is specifically exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.)

The term “sale” means and includes any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal

property for a consideration. (Rev. & Tax. Code § 6006(a).) You state that HMI plans to transfer the tangible personal property to P--- as a contribution to capital, and that HMI will receive no consideration from P--- for the property. Please note that consideration would include the assumption of HMI's liabilities by P---, an intercompany debt, the cancellation of indebtedness, or HMI's receipt of any additional shares in P---. Of course, since you have not provided us with a copy of the relevant contract(s), we cannot say for certain that the transfer does not involve consideration given in exchange for the property. A transfer of tangible personal property in which no consideration is given for the property is not a sale or purchase. (Rev. & Tax. Code §§ 6006(a), 6010(a).) Therefore, no sales or use tax would apply to the transaction about which you inquire if no consideration is provided by P--- in exchange for obtaining ownership of the property.

If, rather than transferring the property as a contribution to capital as discussed above, HMI leases the property to P---, the rules regarding the application of tax to leases as explained in Regulation 1660 apply.

The lease of tangible personal property in California is a continuing sale subject to use tax measured by rentals payable unless the lessor leases the property in substantially the same form as acquired and has either paid California sales tax reimbursement or use tax to its vendor, or has made a timely election to pay use tax measured by purchase price. (Rev. & Tax. Code §§ 6006(g)(5), 6006.1, Reg. 1660.) When a lease is a taxable continuing sale, the lessor must collect the tax from the lessee and pay it to the state. (Rev. & Tax. Code § 6203, Reg. 1660(c)(1).)

You indicate that HMI has paid California sales tax reimbursement or use tax on the purchase price of the property. As long as such tax has been paid and the property is leased in substantially the same form as acquired, the lease would not be a continuing sale or purchase subject to tax.

If you have further questions, please feel free to write again.

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:cl

cc: Out-of-State District Administrator