

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION  
DEPARTMENT OF BUSINESS TAXES

**395.0090**  
7/13/1967

BT-169 REV. 2 (4-63)  
PRELIMINARY HEARING REPORT

Report of Hearing Officer W. W. Burkettlsmk 8-30-67

Taxpayer

Account Number  
Form Number: 432  
Date of Billing: 1-25-67  
(From: 7-1-63  
Period  
(To: 12-31-64

Date of Hearing July 13, 1967      Time 11 :00 a.m.      Place San Francisco

Appeared on behalf of Petitioner

Board of Equalization Representatives

Comments and Recommendations

PROCESSED ITEMS:

Sale of business assets not reported.

CONTENTIONS OF PETITIONER:

1. There was no consideration for sale.
2. The liabilities were not assumed by the new partners.

REPORT OF FACTS: The protested amount consists of other consideration deemed to have been received by the petitioner as the result of the transfer of the taxpayer's assets to a new commencing partner consisting of the record taxpayer ---, his wife, ---, and their two children, The pertinent facts surrounding the transfer are found to be as follows:

The taxpayer was registered with the board as an individual. However, since the year 1964 and before, the business was in fact operated by --- as a partnership. This is evidenced by the books of account and a partnership income tax return filed by--- and ---.

The children, --- worked in the business and had cosigned notes securing certain obligations incurred by the business. However, prior to the year 1965, they were merely salaried employees

and did not have the right to share in the partnership profits and losses. The notes executed by --- were not included as consideration for the transfer.

In March 1965, --- individually executed gift tax returns by which each made separate gifts of a portion of their business interest to the two children. A new partnership consisting of was then formed to conduct the business.

CONCLUSIONS: It was concluded that the transfer did not constitute a "sale." In order for a sale to have occurred, the transfer of title must have been made for a legal consideration (Revenue and Taxation Code § 6006). To constitute good consideration in this instance, there must have been a benefit conferred or agreed to be conferred upon the transferors or a detriment suffered or agreed to be suffered by the transferees and the act promise or forbearance constituting that consideration must have been given in exchange for the offeror's act or promise. (See Civil Code § 1605; 1 Witkin Summary Cal. Law (7th ed. 1960) Contracts, § 67, p. 71.)

Here there was no benefit conferred or agreed to be conferred upon the transferors in exchange for the transfer. After the transfer, the transferors stood in precisely the same position with respect to payment of the liabilities as they did prior to the transfer.

While Corporations Code § 15017 provides that a partner admitted into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, the statute expressly provides:

"... that this liability shall be satisfied only out of partnership property."  
(Emphasis added.)

These assets were previously available for payment of the debt. Thus, where an incoming partner receives an ownership interest by way of gift and does not make an independent promise to pay the partnership liabilities from his other resources, there is no transfer for a consideration. There is merely a gift to a net capital interest.

The transferee - donees - did not expressly agree to become personally liable for the pre-existing obligations and such cannot be fairly implied from the receipt of the gift.

It is also entirely possible that the making of a gift by the individual parents would constitute a valid reason for recognizing the transfer as a two-step transaction rather than a transfer by the partnership. In view of the conclusion reached above, it is deemed unnecessary to express an opinion on this point.

RECOMMENDATION: The protested item should be deleted from the measure of tax proposed for redetermination. Adjustment to be made by Headquarters, Petition Unit.

W. E. Burkett, Hearing Officer

WEB:kc

APPROVED:

\_\_\_\_\_  
Principal Tax Auditor

\_\_\_\_\_  
9-1-67  
Date