



STATE BOARD OF EQUALIZATION

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August 29, 1996

E. L. SORENSEN, JR.
Executive Director

Mr. M--- M---
Director of Financial Operations
J--- --- Medical Center
XXXX --- --- Road
--- ---, California XXXXX-XXXX

Re: S--- C--- S--- L--- Inc.
J--- --- Medical Center
Account No. SR --- XX-XXXXXX

Dear Mr. M---:

This is in response to your letter dated July 12, 1996 in which you ask whether a sale of assets to J--- --- Medical Center is an exempt occasional sale. You state:

“J--- --- Medical Center is a hospital located in California. J--- --- Medical Center has recently purchased the assets of S--- C--- S--- L--- Inc. (S---), a laboratory service provider located in California that does not hold a California seller’s permit. We believe S---’s sale of the assets, with the exception of vehicles purchased in the transaction, to J--- --- Medical Center may be exempt as an occasional sale (purchase). We request that the State Board of Equalization (SBE) provide written advice to clarify whether the sale of all of S---’s assets to J--- --- Medical Center is an exempt occasional sale pursuant to CRTC §§6606.5 and 6367, and 18 Cal.Code Reg. §1595.

“S--- is in the business of analyzing medical samples and providing reports to its clients. S--- has not made retail sales of tangible personal property taxable under the California sales and use tax law during the 12 months preceding the sale of assets to J--- --- Medical Center, with the exception of the following activities:

| “Amount | Description of Sale |
|--|---|
| \$100 | Laboratory equipment |
| \$252 | Used blood sold to another laboratory (not held or used in a selling activity) |
| \$200 | One vehicle for on-road use that is required to be registered with the Department of Motor Vehicles |
| \$262,041.84 (value of tangible personal property) | All assets of the business in one transaction to J--- --- Medical Center, including equipment, computer hardware and software, vehicles and supplies” |

The exemption about which you inquire is provided by Revenue and Taxation Code section 6367 for occasional sales and is explained in subdivision (a) of Regulation 1595. As relevant to your inquiry, “occasional sale” is defined by subdivision (a) of Revenue and Taxation Code section 6006.5 as:

“A sale of property not held or used by a seller in the course of activities for which he or she is required to hold a seller's permit or permits or would be required to hold a seller's permit or permits if the activities were conducted in this state, provided the sale is not one of a series of sales sufficient in number, scope, and character to constitute an activity for which he or she is required to hold a seller's permit or would be required to hold a seller's permit if the activity were conducted in this state.”

Any person who is a seller is required to hold a seller’s permit. (Rev. & Tax. Code § 6066.) The term “seller” includes every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are subject to sales tax. (Rev. & Tax. Code § 6014, Reg. 1699(a).) That is, even if a person’s sales are all for resale, that person is a seller and is required to hold a seller’s permit. That seller’s one retail sale of its entire business would not be an occasional sale under subdivision (a) of section 6006.5. Furthermore, even if all of that person’s sales were made outside California except for the final sale of the business, that final sale would not qualify as an occasional sale.

You list four sales made by S---, but it is not clear whether these are the *only* sales of tangible personal property made by S---. Rather, you state that S--- had not made other *retail sales* of tangible personal property taxable under California law. However, as discussed above, this is not the relevant test. The relevant test is whether S--- had made *any* other sales of

tangible personal property, whether those sales were inside or outside California and whether those sales were at retail or were for resale. The remainder of this opinion is based on the assumption that S--- made *no* other sales of tangible personal property anywhere except for the four sales listed in your letter. If this assumption is incorrect, this opinion does not apply.

As explained in subdivision (a) of Regulation 1595, a person who makes three or more sales for substantial amounts in any period of 12 months is required to hold a seller's permit, as is a person who makes a substantial number of sales for relatively small amounts. Sales of vehicles required to be registered or subject to identification under the Vehicle Code are not counted in determining the number of sales for this purpose when the seller is not a person required to hold a permit by virtue of the number of its sales of vehicles. Thus, S---'s sale of the vehicle required to be registered with the Department of Motor Vehicles is excluded from the calculation. In addition, sales of property of a type which would never be subject to sales tax (even at retail) are also not counted for these purposes. (Rev. & Tax. Code § 6014.) Sales of human blood are not subject to tax. (Rev. & Tax. Code § 33.) This means that, for purposes of determining whether S---'s final sale of assets was one of a series of sales requiring the holding of a seller's permit, S--- made a total of two sales of tangible personal property. As such, the final sale was not one of a series of sales requiring the holding of a seller's permit, and we therefore conclude that S---'s final sale of assets (other than its sale of any vehicles, vessels, or aircraft included in that final sale) was an exempt occasional sale under Revenue and Taxation Code sections 6006.5(a) and 6367.

We hope this answers your question. However, as discussed above, this opinion is specifically based on the facts stated in your letter and the assumptions made above. If our assumptions are incorrect, for example, if S--- made any sales other than those specifically discussed above, this opinion does not apply. If such is the case and you wish an opinion applicable to the actual facts of the transactions, please write again and describe with specificity the nature and types of sales made by S---, whether at retail or for resale, and whether inside or outside California.

Sincerely,

David H. Levine
Supervising Tax Counsel

DHL/cmm

cc: --- District Administrator (--)