



STATE BOARD OF EQUALIZATION

December 16, 1952

You state that A and B were general partners in an ice cream business and that the partnership of A and B holds a seller's permit. B sold her share of the business to C who then became a general partner in the partnership of A and C. The share of the business sold by B consisted of fixtures and equipment. You inquire as to the application of the sales tax to this transaction.

The application of the sales tax depends primarily upon whether the sale was made by B to C or by the A-B partnership to C. Section 6006.5(a) of the California Revenue and Taxation Code provides that an occasional sale includes a sale of property not held or used by a seller in the course of an activity for which he is required to hold a seller's permit, provided such sale is not one of a series of sales sufficient in number, scope and character to constitute an activity requiring the holding of a seller's permit. If the sale was made by B and B has not made other sales of tangible personal property in an individual capacity within a twelve-month period, the sale would then be an exempt occasional sale of a non-retailer (Section 6367 of the Code).

On the other hand, if the transaction took the form of a sale by the A-B partnership, it would be subject to the tax as a sale of property held or used by the seller in an activity requiring the holding of a seller's permit. If the sale was by the partnership, Section 6006.5(b) would also not result in an exemption inasmuch as there is a substantial change in the ultimate ownership by virtue of the fact that A and C have replaced A and B as ultimate owners.

We are construing your letter as a claim for refund. In order that we may properly process the claim we would appreciate it if you would furnish us with the complete details relating to this transaction, including the date of the sale, the amount involved, together with any written contract, or other documents which would indicate the exact nature of the transaction.

Very truly yours,

W. W. Mangels
Tax Counsel

WWM:ja

cc: San Jose – Tax Administrator
George R. Reilly