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**STATE BOARD OF EQUALIZATION**

May 13, 1974

Mr. H--- J. H---  
H---, ---, ---  
& ---  
Attorneys at Law  
XXXX --- Blvd., Suite XXX  
--- ---, CA XXXXX

Dear Mr. H---

Re: M--- D--- Co.  
SR -- XX XXXXXX

Before coming to the question raised in your letter of May 6, I should explain that the staff opposes the view that a business which sells merchandise to two classes of clientele (such as jobbing customers and retail customers) is engaged in two distinct activities for the purposes of Section 6006.5. We are repeatedly presented with the argument that a business' wholesale activity is distinguished from its retail activity in the same type of merchandise. We oppose such a conclusion. This is mentioned not in the belief that our established opinions should be more convincing from your point of view but because it should indicate the strength of our resistance to such a conclusion unless the activities are clearly proved to be separate, not just separable, enterprises.

But assuming, for the purposes of addressing your question, that M--- D--- Co., had two separate business activities at 11:58 p.m., June 30, 1973, it did not transfer all or substantially all of the property held or used by it in the course of such activities. In other words, the point you raise would be supported by the statute if Section 6006.5(b) read "in the course of such an activity" or "in the course of any such activity." But the section as it reads, in our opinion, requires all or substantially all the assets held or used in all selling activities to be sold rather than all or substantially all of the assets held or used in the course of one of several, separate, selling activities.

Mr. H--- J. H---  
(SR -- XX XXXXXX)

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Please note that the reference to permits in Section 6006.5 is to identify the activities and not to delimit them. A permit is not for a separate activity but is for each place of business at which the permittee expects to conduct his business.

As before, I would be happy to receive your comments on your client's situation.

Very truly yours,

Philip R. Dougherty  
Tax Counsel

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Enclosures