OFFICE CORRESPONDENCE

Place: Sacramento, California
Date: March 16, 1953

To: [redacted]

From: [redacted]

Re: [redacted] s
[redacted]

Account No. [redacted]

[redacted] Transfer of Certain Assets of a Corporation to One of the Stockholders. A corporation is owned equally by two parties. They agree to separate the operation of the business. To accomplish this purpose the corporation sells to one of the parties certain assets in return for all of the stock of the corporation owned by such party.

The transaction is clearly not an occasional sale within the requirements of Section 6006.5(b). All or substantially all of the property of the corporation is not transferred, nor is the real or ultimate ownership of the property substantially similar to that which existed prior to the transfer. 3/16/53.

Taxpayer is a corporation and prior to April 30, 1951, was owned equally by [redacted] and his son, [redacted] The corporation had places of business in San Francisco and San Mateo. For various reasons it was decided that the son take over the San Mateo operations and equipment connected therewith. To effectuate this, the father and son and the corporation entered into an agreement whereby the corporation sold to the son certain assets in return for all of the stock of the corporation owned by him.

The agreement provided:

1. The net worth of the corporation is $148,632.71, determined as follows:

Assets	$788,341.61
Less liabilities*	639,708.90
Net worth	$148,632.71

*Including notes to the father of $98,098.33 and to the son of $78,782.13.

2. The son agrees to sell his stock to the corporation for $73,474.50, but as it is not possible to convert the assets into cash he has agreed to accept assets having a net value of that amount. The corporation agreed to take the necessary steps to create a reduction surplus (by reducing its stated capital) in order to carry out the agreement.

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3. The assets transferred and the liabilities assumed are:

Assets transferred

a. Cash		$ 3,832.87
b. Accounts receivable	$194,980.32	
Less reserve for bad debts	3,409.51	191,570.81
c. Work in process (Ex. B)		
Cost $547,833.36		
Plus 10% +54,783.34 (representing profit)		
$602,516.70		
*Should be 602616.70		
Less progress 6		
billings 586,307.13		3 16,209.57
d. Inventory (Ex. C)		68,370.28
e. Prepaid expenses (Ex. D)		1,109.19
f. Fixed assets (Ex. E)	(no value assigned)	
Total value of assets transferred		$304,274.98
Liabilities assumed (Ex. F)		230,800.48
		$ 73,474.50

From the above it can be readily determined that the value assigned to the "fixed assets" (office furniture, trucks, machinery and equipment) is $23,182.26. The auditor has set up as taxable $23,082.26, the depreciated book value of these items. (I cannot account for the $100 difference in these figures.)

Taxpayer contends that the transaction is an occasional sale and exempt from tax under Ruling 81 and Sections 6006.5 and 6367.

It appears to be clear that the transaction is not an exempt occasional sale as it meets neither of the two requirements set out in 6006.5(b). The transfer is not of all or substantially all of the property held or used in the course of an activity requiring a seller's permit and the real or ultimate ownership of the property is not substantially similar to that which existed before the transfer.

The transaction was clearly a sale in that the corporation transferred title to assets having a net value of $73,474.50 for stock having the same value. (See letter of E.H.D. to W.R.T. dated August 14, 1951, file .)

It is recommended that the protest be denied.

John H. Murray

John H. Murray

JHM:ja