

April 24, 1959

Gentlemen:

Thank you for your letter of April 14 which contains your reasons for believing the occasional sale exemption provided in Section 6006.5 of the Sales and Use Tax Law (pamphlet copy enclosed) applicable to the above taxpayer's transfer of assets to _____.

As you are aware, Section 6006.5(a) defines an occasional sale to include 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...." Reference to Section 6014 of the law clearly indicates that the taxpayer is a seller as therein defined and was necessarily required to hold a seller's permit as per Section 6066. You will notice that the definition of seller is not limited to persons engaged in the business of making retail sales.

It seems obvious that taxpayer's transfer does not qualify as exempt for the reasons mentioned above. In addition, it appears possible that the current sale may be one of a series of sales of equipment "sufficient in number, scope, and character to constitute an activity" requiring that company to hold a seller's permit.

From your letter it is apparent that our difference of opinion is based primarily on the correct interpretations of the words "substantially similar" appearing in Section 6006.5(b). We have consistently interpreted said words as requiring the owners of the property before and after the transfer to have a percentage of ownership similar to their original interest. It is true that the words are reasonably capable of being interpreted as requiring only that the number of owners or the similarity of particular owners be substantially similar. However, it is our opinion that an interpretation of these words other than the one we have employed would extend the exemption beyond the legislative intent.

The following is an example of what would result from applying your interpretation: Suppose that A owns 99 percent of Corporation X and B owns 1 percent. Also suppose that A and B own Corporation Y, but that B owns 99 percent thereof. If property were transferred by Corporation X to Corporation Y it seems

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obvious that A's ownership interest in the property will have been substantially reduced even though he is still one of the owners of Corporation Y. Under your theory the transfer would be exempt either because the same number of owners were involved or because the identical owners were involved although holding different percentages of ownership interest.

Relating the above discussion to your problem, we reasoned that the two-thirds ownership interest in taxpayer held by other than shareholders in your company, was substantially reduced when said shareholders exchanged the property for shares in your company. Before the transfer these parties apparently owned two-thirds of approximately 4,000,000 taxpayer shares. Following the transfer the same individuals owned approximately only 2,500,000 of some approximately 60,000,000 of your shares. As previously stated, we believe such a change is "substantial".

You stated in your letter of March 30, 1959 that a sales tax audit of the taxpayer was anticipated in the near future. We, therefore, respectfully suggest that this item be petitioned following receipt of the Board's formal determination of tax found to be due. In the course of handling your petition, we will be happy to provide you with an informal oral hearing before the legal hearing officer, a formal Board hearing, or both depending on your preference.

Very truly yours,

James J. Delaney
Associate Tax Counsel

JJD:lm
Enclosure
cc: Fresno - Compliance