

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA

(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

February 26, 1975

Mr. W--- S. M---
P.O. Box XXX
--- ---, Calif. XXXXX

Dear Mr. M---:

Re: A--- T--- Company
XXXX --- Street
--- ---, California
Account SR – XX-XXXXXX

Your letter dated January 6, 1975, and addressed to our San Diego office has been referred to the undersigned for reply. You inquire as to the application of sales and use tax to a transaction involving your client, A--- T--- Company.

You state that your client is a partnership and that the interests of one partner, H--- T. N---, Sr., are "nominally held by his wife", R--- N---. For purposes of this reply we assume that evidence is available to show that the partnership interest in R---'s name is in fact community property or separate property of H--- T. N---, Sr., and that the presumption created by Civil Code Section 5110, that any interest in property acquired by a married woman by an instrument in writing is her separate property, can be effectively rebutted. For purposes of qualifying as an occasional sale under the Sales and Use Tax Law community property held under the name of one of the spouses is considered to have the same ultimate ownership as community property held under both names (Commerce Clearing House (CCH) State Tax Reporter, California Vol. 3, Section 60-242.16, October 23, 1953). The opinion stated herein is valid only if the partnership interest is shown to be either community property or separate property of H--- T. N---, Sr.

As stated above, we assume that H--- T. N---, Sr., and H. T. N---, III, are partners doing business as A--- T--- Company. Earnings are divided equally, however H--- T. N---, Sr., has an investment of approximately \$75,500 in the business and H. T. N---, III has an investment of approximately \$10,000 in the business. We assume that the books of the partnership show these amounts in the accounts of the two partners. The partners created a corporation and plan to transfer their interests in the property of the partnership to the corporation in exchange for common stock, preferred stock and notes of the

corporation. H--- T. N---, Sr., is to receive notes in the amount of \$40,000, preferred stock representing \$33,000 of owners' equity in the corporation, and common stock representing \$2,500 of owners' equity in the corporation. H. T. N---, III is to receive common stock representing \$10,000 of equity in the corporation. You inquire as to the sales and use tax consequences of the transfer from the partners to the corporation.

It is our opinion that this transfer is exempt from sales or use tax.

Section 6367 of the Revenue and Taxation Code provides an exemption from sales or use tax for transfers that are occasional sales. Section 6006.5(b) defines an occasional sale as any transfer of all or substantially all the property held or used by a person in the course of activities for which he is required to hold a seller's permit when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. Partners and stockholders are regarded as having the real or ultimate ownership of the property of partnerships and corporations. Note holders are not so considered. Sales and Use Tax Regulation 1595 interprets "substantially similar" ownership to mean that 80% or more of that ownership is unchanged after the transfer. The agreement between the partners provides for the transfer to the corporation of the partner's respective partnership assets in exchange for the stock and notes of the corporation. The ownership of the property after the transfer is substantially similar to that prior to the transfer since more than 80% of that ownership is unchanged, even though a part of H--- T. N---'s partnership investment was exchanged for a note of the corporation. The quality of ownership of the property after the transfer is not identical as between the partners because one partner's interest is manifested primarily in preferred stock of the corporation and the other partner's interest is manifested solely in common stock. However, if the corporation were to liquidate immediately after transfer of the assets, the ownership rights of the two shareholders would be substantially similar to their ownership rights in the partnership as to the value of the tangible personal property transferred. Therefore, neither the difference in classification of stock nor the changes in management rights or rights to share in the profits are considered to affect the ultimate ownership of the assets of the corporation. The ownership interests are more than 80% unchanged. The transfer is therefore an occasional sale and as such is exempt from tax.

If you have any further questions regarding this transfer please contact us again.

Very truly yours,

Herbert L. Cohen
Legal Counsel

HLC RW

cc: --- --- -- Principal Auditor (WLW)