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Gentlemen:

Your letter of January 13, 1967, addressed to Mr. B. H. Trice of our San Francisco office, regarding the taxability of the sale and lease of certain tangible personal property, has been referred to this office for reply.

It is our understanding that "S", the sole proprietor of "L", sold approximately 43 percent of the tangible personal property to a commencing corporation "C", of which he was the sole stockholder. The remaining tangible personal property was leased to the corporation for a minimum of five years. The consideration "S" received for the property consisted of stock, a note and the assumption of liabilities by the corporation. The note and assumption of liabilities represented 31.21 percent of the consideration received for the tangible personal property.

You contend that the transaction, i.e., the sale and lease of the property, is an exempt occasional sale under Section 6006.5 (b) of the Sales and Use Tax Law.

"Transfer" as defined in the Civil Code, Section 1039:

"...is an act of the parties, or of the law, by which title to property is conveyed from one living person to another."

In legal phraseology, it is commonly used to denote the passing of title in property, usually realty, or an interest therein from one person to another. In its ordinary use, it has a very general meaning including the removal of a thing from one place to another, the changing of its control or possession, or the conveyance of title to it. (Commercial Discount Co. v. Cowen, 116 P.2d 599.)

The term "transfer" is not specifically defined in the Sales and Use Tax Law. However, as a matter of statutory construction, words and phrases are to be construed according to context and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law are to be construed according to such peculiar and appropriate meaning. (Civil Code Section 13.) Since the phrase "transfer of property" has acquired a special meaning in legal phraseology, i.e., passing of title to property, we are of the opinion that this meaning should prevail unless the Sales and Use Tax Law requires otherwise. In the

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Sales and Use Tax Law, we are not as concerned with the fact of whether or not legal title (ownership) has passed as we are with whether "beneficial ownership" in the property was conveyed. In view of this fact, we are of the opinion that the phrase "transfer of property" appearing in Section 6006.5(b) means the transfer of beneficial ownership in the property rather than being limited to the transfer of legal title.

Since, in a true lease of tangible personal property, the lessor retains the beneficial ownership of the property and the lessee only receives mere possession, we are of the opinion a lease of tangible personal property under Section 6006(g) or its subsections is not a "transfer of property" within the meaning of Section 6006.5(b).

Therefore, since 43 percent of "S"'s tangible personal property was "transferred" to the corporation and the other 57 percent was leased, we are of the opinion that the transaction is not exempt under Section 6006.5(b).

Very truly yours,

E. H. Stetson
Tax Counsel

Glenn L. Rigby

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