

San Diego - Principal Auditor (WLW)

August 6, 1969

Tax Counsel (GJJ) - Headquarters

This is in reply to your memorandum of May 29, 1969, in which you raise a question as to the proper application of the tax in the context of multiple partnership agreements between the same persons.

We understand that the above referenced accounts operate at the same location, sharing some facilities. As of August 31, 1968, it seems that M. [redacted] transferred the assets of his individual activity into the partnership activity. Since this was not a commencing partnership, you have treated this as a taxable sale. At your ten-day office discussion, a partnership agreement was furnished to you. This agreement was not disclosed to the auditor at the time of his audit despite specific questioning.

It now appears that as of September 1, 1968, a "new" partnership of [redacted] was formed. The formal records of the partnership as it existed prior to this date were not changed. Journal entries made some months later reflect the addition of the contribution of assets by the partners as spelled out in the "new" partnership agreement.

You inquire whether we view Mr. [redacted]'s disposition of his individual assets as a contribution to a commencing partnership, or as a sale or additional contribution to an existing partnership.

In our opinion the transfer by Mr. [redacted] must be regarded, for sales tax purposes, as a sale and not a contribution to a commencing partnership.

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For the purpose of determining which associations are partnerships and, therefore, persons under section 6005 of the Revenue and Taxation Code, we look to the general California law of partnership.

A partnership is defined as "an association of two or more persons to carry on as co-owners a business for profit." [Corp. Code, § 15006.] The relationship is consensual. Although a partnership is sometimes regarded as a legal being separate from its membership (the entity theory), it is usually regarded as having no juristic existence distinct from the members who comprise it (the aggregate theory). The partnership law of California [Corp. Code, §§ 15001-15045] basically follows the aggregate theory. In applying the Sales and Use Tax Law, the board follows the partnership law insofar as the two laws do not conflict. In accordance with section 6005 of the Revenue and Taxation Code, it treats a partnership as a person for purposes of reporting tax. It taxes a transfer of property between a partner and a partnership because under the partnership law of California a partnership holds title to property distinct from its members. For purposes of tax collection, the board follows California partnership law in holding the individual partners liable for the tax obligations of the partnership and may also charge a partner's interest in the partnership for his individual tax liability arising from his other activities.

In our opinion the agreement of September 1, 1968, between Mr. \_\_\_\_\_ and Mr. \_\_\_\_\_ represents, for sales tax purposes, a reordering of their basic partnership agreement; that is, we view the second agreement as a modification of the first. Thus, we do not regard the set of ordered relationships established by the second agreement to be a new set of relationships unrelated to the contractual relationships of these men as they existed prior to the execution of the second agreement, and, accordingly, we do not view the second \_\_\_\_\_ partnership as a "person" distinct from the "first" \_\_\_\_\_ partnership.

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