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**STATE BOARD OF EQUALIZATION**

July 23, 1953

Mr. J--- H. S---  
Public Accountant  
XXXX --- --- Boulevard  
--- --- XX, California

Your letter of May 22

Dear Mr. S---:

You request advice as to whether the following transaction is subject to California sales tax:

A, B and C are partners in Company X, each holding a 1/3 interest in that partnership. A and B form a new partnership, Company Y, with each of the partners owning a 1/2 interest in the partnership. At the time of the creation of the new partnership certain capital assets of the old partnership, including tangible personal property, are transferred to the new partnership.

You ask whether the transfer of those assets would be subject to sales tax. We assume that the A, B and C partnership is engaged in an activity requiring a seller's permit. We think the transfer which you describe is subject to sales tax because the transfer does not meet any of the requirements of an exempt "occasional sale" as defined in section 6006.5(b) of the California Sales and Use Tax Law. You will note that that section defines "occasional sale" as including any transfer of all or substantially all of the property held or used in the course of an activity for which a seller's permit is required, when after the transfer the real or ultimate ownership of the property is substantially similar to that which existed before the transfer.

From the statement which you have given, it would appear that the transfer was not of all or substantially all of the property held or used in the course of an activity requiring a seller's permit.

Also, it appears that after the transfer, the ownership is not substantially similar to that which existed before the transfer. In determining whether ownership is "substantially similar" we have consistently applied the same 80% rule which is applied by the United States Government in determining whether certain reorganizations are tax exempt.

Mr. J---e H. S---

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We trust this sufficiently answers your question, but if you have any further questions, please feel free to call upon us.

Very truly yours,

John H. Murray  
Associate Tax Counsel

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cc: --- --- - Auditing