

795. 2055



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April 18, 1994

Re: **TRANSFER PURSUANT TO MERGER OF  
CORPORATION AND LIMITED PARTNERSHIP**

Dear

This is in response to your letter of March 15, 1994 in which you request our opinion as to the application of tax to a transaction in which a corporation merges with and into a limited partnership pursuant to California Corporations Code section 15678.1 through 15678.8.

Subdivision (b) (3) of Regulation 1595 provides that sales tax does not apply to a transfer of tangible personal property of a constituent corporation to a surviving corporation pursuant to a statutory merger under sections 1100 through 1305 of the California Corporations Code or pursuant to similar laws of other states. The reason a transfer of property pursuant to a statutory merger under sections 1100 through 1305 is not subject to sales tax is that we regard the property to be transferred by operation of law. That is, we do not regard the transfer to be a "sale" within the meaning of Revenue and Taxation Code section 6006.

While the sections cited in Regulation 1595(b) (3) are literally limited to mergers between two corporations, you note that a merger of a corporation with and into a limited

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partnership "effectuates a transfer of assets 'by operation of law' ". You believe that a transfer of property as a result of a merger of a corporation and a limited partnership should also be regarded as a nontaxable transfer by operation of law.

The relevant Corporations Code provision related to mergers under the general corporation law is subdivision (a) of section 1107, which states:

"(a) Upon merger pursuant to this chapter the separate existence of the disappearing corporations ceases and the surviving corporation shall succeed, without other transfer, to all the rights and property of each of the disappearing corporations and shall be subject to all the debts and liabilities of each in the same manner as if the surviving corporation had itself incurred them."

The relevant Corporations Code provision related to mergers of corporations and limited partnerships is subdivision (a) of section 15678.6, which states:

"(a) Upon a merger of limited partnerships or limited partnerships and other business entities pursuant to this chapter, the separate existence of the disappearing limited partnerships and disappearing other business entities ceases and the surviving limited partnership or surviving other business entity shall succeed, without the transfer, act or deed, to all the rights and property, whether real, personal, or mixed, of each of the disappearing limited partnerships and disappearing other business entities and shall be subject to all the debts and liabilities of each in the same manner as if the surviving limited partnership or surviving other business entity had itself incurred them."

As relevant to this discussion, these provisions are identical. We therefore conclude that a transfer of property pursuant to a merger of a corporation with and into a limited

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partnership under Corporations Code sections 15678.1 through 15678.8 is a transfer of property by operation of law and is not a "sale" as defined in Revenue and Taxation Code section 6006. No sales tax applies to such a transfer.

If you have further questions, feel free to write again.

Sincerely,

Sukhwinder K. Dhanda  
Staff Counsel

SKD:plh

cc:

or

bc: Joan Armenta-Roberts - MIC:40  
Please annotate as follows:

Transfers pursuant to statutory mergers under Corporations Code Sections 1100 through 1305 are not taxable under Regulation 1595(b)(3) because the transfers are by operation of law and are not considered "sales" under Revenue and Taxation Code section 6006. A transfer of property pursuant to a merger of a corporation with and into a limited partnership under Corporations Code sections 15678.1 through 15678.8 is also a transfer of property by operation of law that is not a "sale" as defined in Revenue and Taxation Code section 6006. Thus, such transfers are not taxable.