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STATE OF CALIFORNIA

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September 16, 1992

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Dear Mr. ---:

This is in response to your letter dated July 27, 1992 regarding the application of sales tax to transfers of tangible personal property pursuant to certain statutory mergers.

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. You note that the sections cited in this provision relate to mergers between general corporations. You note further that Corporations Code sections 6010 through 6022 provide similar rules which are applicable to mergers between nonprofit public benefit corporations. You state that the effect of the merger provisions applicable to general corporations is the same as those applicable to nonprofit corporations. You ask whether transfers of tangible personal property pursuant to a statutory merger under sections 6010 through 6022 is subject to sales tax.

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.

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 under the nonprofit

Mr. ---

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corporation law is subdivision (a) of section 6020, 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 and trust obligations upon the property of a disappearing corporation in the same manner as if the surviving corporation 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 under Corporations Code sections 6010 through 6022, as specified in subdivision (a) of section 6020, 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,

David H. Levine  
Senior Tax Counsel

DHL:cl

bc: San Diego District Administrator