(Interoffice memo) April 29, 1957

Application of Tax to Statutory Mergers

At a meeting between board personnel and the Attorney General's Office, the conclusion was reached that statutory mergers do not result in sales tax liability arising as a result of the transfer of the tangible assets of the merged corporation to the surviving or continuing corporation. In a statutory merger, two corporations are involved. The "surviving corporations are merged. (Corporations Code, section 4101). The other corporation goes out of existence and its stockholders are issued stock in the surviving corporation.

It also was concluded that our existing practice in not applying the tax when two corporations consolidate to form a third corporation, the only consideration received by the stockholders of the consolidating corporation being stock in the newly formed corporation, is proper.

Accordingly, it is recommended that steps be taken to recommend redeterminations where determinations have been levied which include transfers arising as a result of statutory mergers and that where audits having been made proposing such determinations that they be revised to eliminate from the measure any receipts attributable to statutory mergers.

This was written by E.H. Stetson, a Legal Division attorney SPJ 7/11/02