State of California

Ruling 81

395.2275

Occasional Sale — Joint Venture

Board of Equalization

Memorandum

To : [redacted]

Date: August 4, 1965

Joint Ventures Ruling — Transfers at Termination

24.

From : Tax Counsel (WEB) - Headquarters

Subject: [redacted]

You have requested that we review the field audit report for the above named account for the period October 1, 1963 to June 30, 1964, and advise if the transfers of equipment were properly classified as taxable sales.

Our review of the report discloses that the transactions in question involve assets transferred from books of account of petitioner to other joint ventures of the same real or ultimate ownership. The transfers were made only upon the natural termination of the enterprise for which petitioner's joint venture was created.

Paragraph 13 of the petitioner's joint venture agreements indicates that the parties contemplated a sale of joint venture assets upon completion of the joint venture work. In absence of sale, there was to be a distribution of the assets in kind.

The field auditor's comments state that for accounting purposes the transfers were credited to the joint venture's investment accounts and later were debited directly to the accounts of the entities receiving the assets.

While the matter is not entirely free from doubt, we believe the proper interpretation is that the transfers represent distributions in kind and not sales. It appears that the parties decided to transfer the assets to the other entity only upon liquidation and in absence of sales of the assets. This is indicated by the following:

1. The transfer occurred only upon the final termination of petitioner's joint venture enterprise.

2. The parties' agreement provided for distributions in kind upon termination of the joint venture in absence of sales of the property.

3. There was no bargained-for exchange between strangers in the usual sense.

4. There is no indication of a predetermined plan to transfer the assets from one joint venture to another.

5. The entries in the capital accounts indicate that at the time of the transfer there was also a withdrawal of the "investment" represented by the assets transferred.

The subsequent transfers to the other joint ventures should be treated as contributions of capital unless there is evidence that the respective partners received consideration other than an interest in the joint venture, such as the setting up of loans payable, cash payment or other taxable consideration.

WEB:o/b