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STATE OF CALIFORNIA
BOARD OF EQUALIZATION

In the Matter of the Petition for Redetermination Under the Sales and Use Tax Law

[redacted]

Petitioner

DECISION AND RECOMMENDATION OF HEARING OFFICER

Account No. [redacted]

This matter came on regularly for hearing in Santa Ana, California on April 15, 1975.

Appearing for the taxpayer were [redacted], and [redacted]. Messrs. Lewis and Geraco appeared for the board.

Protested Item
(Period 7-1-71 to 11-7-74)

Taxable sale of tangible personal property not reported.	$975,902

Contentions of Taxpayer

The transfer qualifies for exemption as an occasional sale.

Summary of Petition

The taxpayer is a corporation that formerly engaged in diversified business activities through separate operating divisions.

The protest involves the transfer of the tangible personal property assets of the taxpayer's [redacted] to a wholly owned corporation, [redacted]

According to a copy of a resolution, the decision to transfer these assets was approved by the board of directors of the petitioner on September 12, 1972. The actual transfer of the assets was made on November 7, 1972.

The copy of the resolution also indicates that on this date the board also approved in principle the transfer of the taxpayer's [redacted] to a new corporation and certain other transfers involving real property of the taxpayer corporation.

The transfer of the [redacted] was carried out on January 1, 1973, and the other transfers noted were carried out on or before January 18, 1973.

The audit staff denied exemption as an occasional sale on the basis that the transfer did not constitute a sale of all or substantially all of the taxpayer's tangible personal property assets held in activities for which sellers' permits were required within the meaning of Revenue and Taxation Code section 6006.5(b). An exemption was allowed for the transfer of the assets held in the [redacted]

It is the taxpayer's contention that the transfer of the [redacted] and the [redacted] should be considered a single transfer. The audit staff concedes that such a transfer would have qualified under the provisions of section 6006.5(b).

note Reg 1595(b)(4)

Other Information:

The transferee corporation was apparently created several months prior to the actual transfer of the assets. However, the transfer was classified as a transfer to a commencing corporation.

In March of 1972 the taxpayer completed a similar transfer of assets of the company's [redacted] to another wholly owned subsidiary, [redacted]

A business prospectus made a part of the taxpayer's file recites that "During 1972, and the early part of 1973, the company carried out a program of redeployment whereby each of its business activities was constituted as a separate subsidiary corporation".

Analysis and Conclusions

It is our conclusion that the transfer was properly denied exemption as an occasional sale.

The exemption for occasional sales provided by Revenue and Taxation Code Section 6367 is required to be strictly construed and limited to the definitions provided by Revenue and Taxation

Code section 6006.5 (see U. S. Industries v. State Board of Equalization, 198 Cal.App.2d 775). The pertinent provision here is subparagraph (b) of section 6006.5 which reads as follows:

> "(b) Any transfer of all or substantially all of the property held or used by a person in the course of such activities when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For the purposes of this section, stockholders, bondholders, partners, or other persons holding an ownership interest in a corporation or other entity are regarded as having the 'real or ultimate ownership' of the property of such corporation or other entity."

The statute speaks in terms of a transfer and a time is not specified for testing the effect of the transfer. We, therefore, conclude that the requirement for a transfer of all or substantially all of the property must be tested immediately after the transfer claimed exempt and not at some later uncertain date.

The transfer was just one of several separate transfers, in form, initiated to carry out a program of business reorganization. The copy of the corporate minutes approving the transfer indicates that the subsequent transfers were only "approved in principle" and were subject to "any legal and tax problems associated therewith". It thus is apparent that there was not a single transfer of assets, in substance, but several separate transfers made as part of the plan of reorganization. The mere fact that transfers are made as part of a plan of corporate reorganization is not sufficient to provide an exemption from the sales and use tax (see Pacific Pipelines v. State Board of Equalization, 49 Cal.2d 729).

It follows that the transfer fails to qualify for exemption for the reasons that it did not represent a transfer of all or substantially all of the tangible personal property assets held or used by the taxpayer in its permitted activities.

Recommendation

It is recommended that the taxes be redetermined without adjustment.

W. E. Burkett — 5-21-75

W. E. Burkett, Hearing Officer — Date