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State of California

Board of Equalization
Legal Division-MIC: 82

Memorandum

To : Ms. Karen Yee
Consumer Use Tax Section

Date: July 1, 1997

From : Warren L. Astleford
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Subject: C
(No Permit No.)

This is in response to your May 19, 1997 memorandum regarding the application of tax on a series of transactions involving C, B and A. We initially note that there is little documentation or background regarding the transactions between the parties. As such, we are only able to provide an opinion on how tax applies based on the available facts and assumptions we provide. Our opinion below might be different upon a review of all the relevant documentation between the parties and/or additional facts and information. With that in mind, we understand the facts surroundings the transactions in question as follows:

C is a Delaware corporation in the automobile leasing business. A is a wholly owned subsidiary of C formed and organized in August 1994 for the purpose of financing C's vehicles. In January 1996, C executed a Share Purchase Agreement (hereafter "Agreement") with the to acquire all the outstanding stock of B. As part of that agreement, C paid approximately $37 million to the to satisfy the debt owing on B's fleet financed by . We assume that the funds for this transaction were obtained or guaranteed by C through one or more third party financing companies unrelated to C [1] Subsequently, in December 1996, A issued $176 million in bonds which C used (not A :) to pay off various revolving debt obligations of B. We further understand that B was required to transfer title to 1000 of its fleet vehicles to A as part of the bond issuance since these vehicles were paid-for through the monies obtained by A's bond issuance.[2] A May 13, 1997 letter from C's

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[1] A portion of these loans are probably in the name of B The basis for this assumption is set forth in footnote number two.

[2] C s May 13, 1997 letter to you states that the subsequent bond issuance by A was used to pay-off revolving credit lines held at various banks under the name of B. Since B transferred 100. vehicles to as required by the bond issuance, it appears that a portion of A s bond monies paid-for (or paid-off) the 1000

Senior Accounting Analyst states that "the need for the registered owner name change is due to the fact that the bondholders for A require any vehicles financed with funds from the . . . [bond issuance] be held in the name of A "

We understand you to ask whether tax applies on the transaction between C and the for the purchase of the B stock, and whether tax applies to the transfer of title to the 1000 vehicles between B and A . For purposes of this opinion, we assume that each of the above transactions occurred inside this state.

DISCUSSION

A. Purchase of B Stock

Sales tax is imposed on a retailer's gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax is imposed on the storage, use, or other consumption of property purchased from a retailer for use inside this state. (Rev. & Tax. Code §§ 6201, 6401.) Gross receipts or sales price include all amounts received with no deduction for the cost of materials, service, or other expense of the retailer passed on to the customer unless there is a specific statutory exclusion. (Rev. & Tax. Code §§ 6011, 6012.) With regard to the sale of a corporation's stock, Regulation 1595(a)(6) provides:

> "The sale of stock of a corporation is not a sale of tangible personal property and is not subject to sales tax. A stock purchase is not a purchase of tangible personal property and is not subject to sales or use tax notwithstanding the fact that the stock purchase may be treated as an asset acquisition for federal income tax purposes pursuant to Internal Revenue Code Section 338." (See also BTLG Annot. 395.1250 (5/8/87).)

In this case, C purchased all the outstanding stock of B pursuant to the January, 1996 Agreement with the . That agreement required C to purchase B 's stock for "$100 plus any amount by which the Buyer's Debt Payment ... exceeds the Fleet Debt" (see Agreement ¶ 1.1, p.2) and to pay, or have B pay, that amount to the (see Agreement ¶ 1.2(a), p. 3). In other words, C purchased all the outstanding stock of B in exchange for $100 plus payment in full of the balance owing on B s fleet cars. We assume that B (and not C) retained title to these vehicles such that C only purchased B's stock and not the vehicles financed by . Under these facts, tax does not apply to the amounts from the sale of B's stock to C

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vehicles. If the debt obligation on the 1000 vehicles was in the name of B , it would also appear that B took out some portion of the loans used by C to purchase B s stock.

B. B's Transfer of Vehicles to

Revenue and Taxation Code section 6006(a) provides that a sale includes any transfer of title or possession, in any manner or by any means whatsoever, of tangible personal property for a consideration. (Rev. & Tax. Code § 6006(a).) Consideration generally includes any benefit conferred, or agreed to be conferred, upon the promisor by any other person to which the promisor is not lawfully entitled as an inducement to the promisor. (See Civ. Code § 1605.) This means that a sale takes place when a person transfers title to tangible personal property to another in exchange for a benefit to which they are not otherwise entitled. B's transfer of its vehicles to A appears to be such a transfer and is subject to tax.

As set forth above, we understand that A issued $176 million in bonds in December, 1996 which C used to pay-off various debts owed by B . We further understand that a portion of these debts constituted some of the separate financing obtained in order for to purchase the stock of B . As part of this bond issuance, B was required to transfer title to 1000 of its fleet vehicles to A . That is, a portion of the proceeds of the bonds issued by A were used to satisfy a B's debt for the 1000 vehicles on the condition that B transfer title to those 1000 vehicles to A . This constitutes a sale of the 1000 vehicles by B since it transferred title to these vehicles to A in exchange for A 's repayment of B's obligation to a third party. Tax is due on the purchase price of these vehicles.

C asserts that this transaction is not subject to tax since B and A are both subsidiaries of C and that no material change in ownership took place. This is incorrect. A corporation is regarded as a person for sales and use tax purposes. (See Rev. & Tax. Code § 6005.) B and A are each separate corporations and are therefore regarded as separate persons under the Sales and Use Tax Law. This means that B's transfer of title to the 1000 vehicles to A was a transfer of property from one person to another. This result in unaffected by the fact that both B and A are both wholly-owned subsidiaries of C . It further appears that the provisions of Regulation 1595(b)(2) "Transfers Of Substantially All Property Without Substantial Change In Ownership" do not apply since B does not indicate that it transferred 80 percent or more of its tangible personal property to A when it transferred the 1000 cars.

As noted above, our opinion is based on the few facts and documents available and the assumptions we have provided. Our opinion might be different upon our review of any additional facts or documents. In that regard, it would be helpful if the taxpayer provided us with copies of the loan documentation that was paid-off from the proceeds of A s bonds. Relevant portions of the directives for A s bond issuance would also be helpful. Finally, the taxpayer should provide us with a clear and succinct statement of all the relevant facts discussing all of the various transactions by and between the parties.

We hope this is helpful. If you have any further questions, please write again.

WLA/cmm