

May 16, 1955

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This is in reply to your letter of February 14. We regret the long delay, but find that the volume of correspondence we handle prevents our more prompt reply.

You ask if sales tax applies to a transfer of used equipment from a corporation to a wholly owned subsidiary. The price will be the depreciated book value.

We assume that the transferor is engaged in the business of selling tangible personal property and has a seller's permit issued under Section 6068 of the Revenue and Taxation Code and that the equipment transferred was used in the course of the activity of selling tangible personal property. See Ruling 81, copy enclosed. Based on these assumptions, the transfer is a retail sale and is subject to tax. The case of Biggsby v. Johnson, 18 Cal. 2d 860, held that sales tax applies to a sale of a used press by a printer.

The sale is not exempt under Section 6006.5(b) because it is not a "transfer of all or substantially all the property held or used" by the transferor in the course of the activity of selling tangible personal property. The measure of tax is the price charged even though that price is less than the fair market value of the property transferred.

If the parent corporation purchased the equipment tax paid, no tax liability is incurred by the loan or rental of the equipment to the subsidiary, and it is immaterial how much, if any, the subsidiary pays for the right to use the equipment.

Very truly yours,

Bill Holden
Associate Tax Counsel

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