

535.0000 SUCCESSOR'S LIABILITY—Regulation 1702

535.0002 Assets Associated with a Business. Under the terms of a contract, B assigned its existing leases of premises, furniture and fixtures, trade name, customer lists, and goodwill together with the right to negotiate new leases to A. A did not acquire any inventory or accounts receivable from B. A stated that in actuality it did not utilize all of the assets assigned to it by B. Nevertheless, A is the successor to B. The accounts receivable and inventory are not essential elements of a business. A acquired all of the essential elements of the business from B and is liable as a successor to B under Revenue and Taxation Code sections 6811 and 6812. 6/5/75.

535.0003 Assumption of Liabilities. A taxpayer entered into an agreement to purchase from A his (1) supplies, (2) inventory, (3) furniture, (4) office equipment, and (5) miscellaneous items. In consideration the taxpayer assumed the following:

- (1) A's liability of \$6,200 to an awning company.
- (2) A's liability of \$2,200 on the purchase of an office unit.
- (3) A's liability of \$1,290 for phone, lights and carpet.
- (4) A's flooring on five mobile homes and two furniture packs.

The agreement specifically provided that "this is not a purchase of a business, but consists entirely of a purchase between buyer and seller of merchandise, parts, inventory for proper consideration."

The taxpayer cites the agreement's language and the following factors to support its contention that it was not a successor.

- (1) It negotiated a new lease directly with the landlord.
- (2) It did not retain the business name, phone number, permits and did not acquire goodwill.
- (3) New accounts were opened for utilities.
- (4) It moved the old office building and replaced it.
- (5) It did not acquire receivables and did not assume warranties on mobile homes sold by A.
- (6) A retained some mobile homes which were in inventory. These were homes on which deposits were taken but were not sold and delivered by the time of the transfer.
- (7) It did not receive an assignment of the dealer reserve account.
- (8) It used its own Department of Motor Vehicle license to operate.
- (9) It did not use A's signs, marks, logos, etc.
- (10) A did not sign a covenant not to compete.

The taxpayer is considered a "purchaser" and a "successor." It could have assumed fewer of A's liabilities and used the funds to pay A's outstanding tax liability. Thus, it had the means to withhold a sufficient amount to pay the tax liability. 12/23/76.

535.0004 Assumption of Liability. A taxpayer transfers its business or stock of goods to another person in exchange for the assumption of liabilities by the transferee. The assumption of liabilities is

consideration; thus, the transfer is a sale. It follows that the transferee is liable as a successor to the extent of the liabilities assumed. 3/6/84.

535.0010 Cancellation of Billing Followed by Rebilling. A notice of successor liability was issued against a corporation. This billing was later canceled. Still later a new successor liability billing was issued against the corporation. The cancellation of the first billing does not constitute a binding determination because it did not represent a notice of redetermination by the Board. The second billing was valid as long as it was issued within the limitation period. An administrative agency is authorized to correct an error and issue another notice of successorship liability. 6/21/94.

535.0012 Cancellation of Seller's Indebtedness. The cancellation of the seller's indebtedness is a form of purchase price sufficient to impose a duty to withhold on the successor. When the only consideration the purchaser gives is the cancellation of the seller's indebtedness, the purchaser may deny the seller the cancellation of the indebtedness and thereby make such consideration available to the state to satisfy the seller's tax liability. 2/28/85.

535.0014 Consideration—Payment Made to Seller's Lender. A taxpayer purchased the inventory of another company. At that time, the company from which the inventory was purchased was indebted to the Board for unpaid sales taxes. The taxpayer agreed, as sole consideration for the purchase of the inventory, to pay all of the seller's obligations that were secured by the inventory directly to the seller's lender.

When the Board issued its Notice of Successor's Liability to the taxpayer, the taxpayer claimed that the successor's liability was improper because there was no purchase price paid from which a withholding could have been made.

When the taxpayer negotiated for the purchase of the inventory of the other company, it paid for the inventory by its promise to pay the purchase price directly to the other company's lender. Under the holding of the *Knudsen Dairy Products Co. v. State Board of Equalization* (1970) 121 Cal.App.3d 47, the taxpayer had a duty to structure its purchase agreement with the other company in such a manner as to provide for the payment of the outstanding tax liability to the Board. Accordingly, the successor liability was properly imposed upon the taxpayer. 3/11/96.

535.0016 Debtor-in-Possession Is Not a Bankruptcy Trustee. Buyer acquired substantially all of the business assets, including tangible personal property located in California, from four entities each of whom is a debtor-in-possession under a jointly administered Chapter 11 bankruptcy case. The acquisition was approved by an order of the Bankruptcy Court.

Step one of the plan was to merge the four entities into four successor limited liability companies (LLC). The LLC's then became debtors-in-possession with respect to the assets transferred to each successor LLC. The second step was the transfer of the assets from the successor LLC's to the buyer pursuant to approval by the court. The buyer is concerned with being billed for successor's liability for sales and use tax on a sale by debtors-in-possession. Buyer contends that no successor's liability should apply since, as debtors-in-possession under Chapter 11 of the Federal Bankruptcy Act, the LLC's were acting in the capacity, with all the rights, powers and duties, of a trustee in bankruptcy.

Regulation 1702(a) provides that successor's liability does not arise in connection with “. . . other transfers of a business such as assignments for the benefit of creditors, foreclosures of mortgages, or sales by trustees in bankruptcy.” If the regulation had intended to include debtors-in-possession, it could easily have so stated but it did not. While it is true that debtors-in-possession have many of the rights, powers, and duties of trustees in bankruptcy pursuant to 11 U.S.C. section 1107(a), these rights, powers and duties do not make a debtor-in-possession a trustee in bankruptcy. Therefore, successor's liability will apply to the above type of business transfer unless the language of the Order approved by the Bankruptcy Court exonerates the buyer of its successor liability to the Board. 2/10/03. (2004-1).

535.0018 Effect of Secured Creditors Liabilities. The fact that secured liabilities are as much as the purchase price of the business does not relieve the successor of successor's liability of his predecessor's sales tax liability. 12/12/90.

535.0020 Fixed Assets. A sold to B and leased back the fixed assets of A's California stores; B resold the assets to A, and A sold them to C. The tax on the resale from B to A is unpaid. In such case, successor's liability cannot be asserted against either A or C under sections 6811 and 6812 because there must be a sale of the business or stock of goods for successor's liability to attach. B did not sell its business nor did it sell a stock of goods, since "stock" or "stock of goods" refers only to goods or chattels which tradesmen hold for sale. 4/22/59.

535.0022 Foreclosure. A foreclosure is not a sale. Thus, successor's liability will not attach as a result of a foreclosure. However, an agreement between two parties to transfer a business in payment of an antecedent debt is not a foreclosure. An agreement of this type is a sale subjecting the buyer to any successor liability. 8/10/94.

535.0025 Foreclosed on the Security. A trust was the holder of a note from a limited partnership that owned and operated a hotel. The note was secured by the property. The limited partnership defaulted on the note and the trust foreclosed on the property. The real property and improvements were acquired by the trust as the bidding beneficiary at a trustee's sale. The personal property, including the furniture, fixture, equipment, and inventory were also acquired by the trust at the trustee's sale pursuant to section 9501(a)(ii) of the California Uniform Commercial Code.

The trust will sell the furniture, fixtures, equipment and inventory to a new operator of the hotel. It will sell the real property and improvements to an investor. The investor will in turn lease the real property and improvements to the new hotel operator.

The foreclosing on the mortgage by the trust does not result in the trust incurring successor's liability for the sales and use tax liability owed by the original hotel owner and operator or any prior predecessor. Also, neither does the new hotel operator nor the investor incur successor's liability for the liability of the original hotel owner and operator or any predecessors. (Regulation 1702(a).) 9/26/94.

535.0028 Fraudulent Conveyance. A taxpayer (A) held a seller's permit as an individual. After audit, a notice of determination was issued. The taxpayer made a gift of all the assets of the business to his wife. His wife operated the business for a period of time and then transferred the assets to a commencing corporation in exchange for stock. The corporation denies any liability for taxpayer A's unpaid taxes.

Former Civil Code section 3439.04 provides that every conveyance made by a person who is or will be rendered insolvent is fraudulent to creditors without regard to his actual interest if the conveyance is made without a fair consideration. Accordingly, if a taxpayer renders himself insolvent by conveying all of his property to someone else, the conveyance can be set aside by the taxpayer's creditor to satisfy a creditor's claim or the creditor can disregard the conveyance and attach or levy execution upon property conveyed. (Civil Code section 3439.09.) This procedure should be followed in the above case. 4/23/85.

535.0032 Guarantor as Original Purchaser. A shopping center owner has a shopping center with a grocery store occupying about 60 percent of the area of the shopping center. The grocery store was an anchor tenant, which attracted customers to the other tenants' businesses. Without this anchor tenant the center's owner might have lost other tenants in the shopping center. The center's owner extended financial assistance to the owner of the grocery store in an effort to keep this tenant. The shopping center owner signed a continuing guarantee in which he guaranteed to pay up to a certain amount of any indebtedness incurred by the owner of the grocery store to the store's main supplier. He also lent the grocery store owner a sum of money to infuse cash into the business and help continue its operation. The financial assistance proved fruitless and the owner of the grocery store left. The shopping center owner took over the operations of the store the following day and changed the name of the store. Because the grocery store was an anchor tenant and because the shopping center owner could be liable under the guarantee for the owner's debts, he felt compelled to keep the business going. Shortly after the owner left the store, he and the center's owner

entered into a sales agreement whereby the store owner sold the lease of the premises, his interest in equipment, furniture, and fixtures, inventory of stock in trade, and the name and goodwill of the business. The money deposited in escrow was used mostly to pay other lienholders whose liens encumbered the property of the grocery store and only a small amount was paid to the Board. Thereafter, a notice of successor's liability was issued. The above situation raised the following issues.

(1) Whether the center's owner, as a third party guarantor, should be considered the "original purchaser" of the inventory.

If so, the center's owner did not purchase the inventory since he already owned it. In this situation, the guarantee was not made in connection with the purchase of any particular property. There are no terms in the guarantee or in any other agreement executed prior to the sale in issue which indicate that title to the inventory vests in the center's owner. Therefore, the center's owner was not the owner of the inventory at the time of the sale.

(2) Whether the payment made by the center's owner into escrow and paid to the store's main supplier is consideration since the center's owner was liable to the supplier as guarantor.

The purchase price was paid into escrow, and the escrow agent distributed the funds to the creditors of the prior owner including its main supplier. Accordingly, the prior owner received a benefit, i.e., consideration, by having its liabilities to the main supplier extinguished. Its contingent liability to the center's owner was also extinguished since the center's owner was no longer liable under the guarantee.

(3) Whether the current owner of the grocery store can be liable as successor when the full purchase price was committed to other creditors who had claims with higher priority than the Board's claim.

Secured liabilities in an amount as much as the purchase price does not avoid the clear statutory provisions that a successor is liable for his predecessor's sales tax liability (up to the amount of the purchase price) if the successor does not obtain the certificate provided for under Regulation 1702(c). 9/21/93.

535.0040 Survivor's Liability. Corporation A enters into a statutory merger with Corporation B followed by a statutory merger with Corporation C, who is the survivor. Notices of Determination are issued to Corporations A and B. Corporation C may file petitions for redetermination of those determinations since, as the survivor of the statutory mergers, it now stands in the place of the two disappearing corporations. Whatever those corporations owed at the time of the mergers, Corporation C now owes as if it had incurred the liability itself. Thus, if there remains any tax due after the administrative proceedings on the determinations issued against the two disappearing corporations, Corporation C, as the survivor of the mergers, will owe that liability. This would not be liability as a successor, but rather Corporation C will have direct liability as if it were the two disappearing corporations, since, by virtue of the mergers, it effectively was. Accordingly, with respect to the determinations issued against Corporations A and B, Corporation C may file petitions for redetermination of its potential tax liability. 7/2/92. (Am. 2000-1).

535.0043 Jeopardy Determination—Successor Liability. The Board may issue a jeopardy determination against a successor if it finds that the collection of tax would be jeopardized by delay. If a jeopardy determination is issued against a successor, the successor is entitled to petition in the same manner as described under section 6561. 10/23/79.

535.0046 Lessee Satisfies Own Liability—Not Liability of Sublessee. A taxpayer leased real property, signing a personal guarantee for performance of the lease terms. The taxpayer constructed a car wash on the property. The taxpayer sold the car wash and subleased the real property to a third party. The third party subsequently encountered financial difficulties and returned the business to the taxpayer. At the time the third party was in arrears both on payment of sales tax and in rent payable to the owner of the real property. The taxpayer paid the back rent and took over operation of car wash.

There is no successor liability related to the third party's outstanding sales tax liability. The taxpayer's payments to the lessor of the real property were in satisfaction of the taxpayer's own liability under the personal guarantee. The payment was not an assumption of the debts of the third party. 2/4/94.

535.0050 Liability Limited to Specific Business. A taxpayer purchases a manufacturing facility in this state. The seller has a tax liability for the manufacturing location as well as liabilities related to other businesses. Since for purposes of successor liability each location is a separate business, the purchaser's liability as a successor arises only with respect to the tax liability arising from the manufacturing facility. 10/16/90.

535.0055 Partial Payment. The payment to the Board by a successor of an amount believed to be the entire liability of the predecessor does not shield the successor from successor liability for additional amounts unless the successor obtains a certificate pursuant to section 6812 from the Board stating that no amount is due. 6/15/77.

535.0056 Partnership. Where a sole proprietor contributes his business assets to a commencing partnership and another person contributes cash and assets to the partnership, the formation of the partnership is not the result of a purchase of the proprietor's business. Consequently, the person contributing cash and assets is not a successor with respect to sales tax liability subsequently disclosed which pertained to the operation of the proprietor prior to the formation of the partnership. 2/23/72.

535.0057 Penalties. A successor is not liable for penalties which accrue against the predecessor after the date of the purchase of the business or stock of goods. 10/22/87.

535.0060 Purchase from Bankruptcy Trustee. A person who purchases corporate assets from a bankruptcy trustee does not become a successor to the bankrupt business. 1/6/95.

535.0060.325 Purchase of Inventory Subject to Senior Security Interest. The Board imposed successor's liability on a company because it purchased the inventory of Corporation A without providing for payment of the outstanding sales tax liability. The fact that the inventory may have been subject to a senior security interest is irrelevant. The Board is not imposing a superior lien on the inventory sold which would require the purchaser (company) to pay the Board rather than the holder of the senior lien when inventory is sold. Rather, the liability is imposed on the purchaser for taxes due by the seller, Corporation A, pursuant to section 6811. The fact that there was no cash left from the purchase price to withhold does not relieve the purchaser from liability under section 6811. 4/22/96.

535.0061 Purchase of Out-of-State Assets. A taxpayer purchases the out-of-state assets of a California business which primarily is located outside California. The seller maintains only a warehouse/sales office in California. The warehouse/ sales office is not included in the transaction and it is closed at about the same time that the transaction is entered into. The assets transferred are substantially all of the assets of the seller. The seller owes amounts of tax and interest to the Board at the time of the transfer. The taxpayer does not obtain a tax clearance from the Board.

Successor's liability can arise from the purchase of a substantial portion of a business or stock of goods. It is not necessary that the entire business or stock of goods be transferred to the purchaser. Since the seller is engaged in business in California, it is immaterial that the assets purchased are located outside California. 6/2/94.

535.0061.825 Repossession of Collateral. A married couple sold all of its stock in a corporation which owned and operated a hardware store. The purchasers executed promissory notes, security agreements, and a pledge agreement for the purchase of the stock. The couple later assigned these documents to a revocable trust created by them.

The purchasers defaulted and the parties entered into an "Agreement for Repossession of Collateral in Satisfaction of Debt" which provided for the return of all collateral, including the shares in the Corporation, to the trust. Upon receipt by the trust, the purchaser's notes were deemed satisfied. The trust,

in turn, assigned the property to the couple who applied for a seller's permit to operate the business in their names. The couple is subject to successor's liability. 3/18/97.

[535.0062](#) **Request for Tax Clearance.** A taxpayer purchased the assets of Company A, inclusive of the right to do business under its name. When Company A ceased to do business, the taxpayer submitted a final return on behalf of Company A together with correspondence advising the Board that (1) the return was for the period October 1, 1989 through October 12, 1989; (2) taxes due for subsequent period(s) would be included in taxpayer's return(s); and (3) by agreement, payment of the sales tax related to the purchased assets was the responsibility of the taxpayer. The Board was requested to contact taxpayer should any additional questions arise.

Under sections 6811 and 6812, a taxpayer's request to the Board for a certificate that no taxes, interest, or penalties are due from the seller must be clear and unambiguous. Nowhere in taxpayer's letter to the Board is there an express or implied request for such certificate. The letter merely puts the Board on notice that taxpayer has purchased assets of the company. This clearly does not satisfy the requirements of section 6811 and 6812. Therefore, the letter cannot be accepted as a request for tax clearance. 1/5/94.

[535.0065](#) **Sale of Business Assets.** A newspaper ceasing publication agreed to sell certain assets to a purchaser. The assets included intangible assets, all subscriptions, circulation and advertising lists, microfilm copies of back issues, related libraries, morgues, all delivery trucks and newspaper racks. At the time of the sale the newspaper owed outstanding tax liabilities.

The purchaser is a "successor or assign" of the seller, within the meaning of Revenue and Taxation Code section 6811. As such, successor's liability would be imposed on the purchaser if the amount of the tax due and payable by the newspaper, is not withheld and remitted to the Board at the time of sale. 7/13/93.

[535.0070](#) **Sale of Liquor Store .** A taxpayer, who sold a liquor store with a liquor license, later foreclosed on the purchaser and regained ownership of the store and license. The Board refused to release its hold against the transfer of the liquor license back to the taxpayer until the purchaser's tax debt was paid.

The hold on the liquor license was not due to successor's liability. The hold on the transfer was based upon Business and Profession's Code section 24049, which provides that the Department of Alcoholic Beverage Control may refuse to transfer a liquor license when the owner is delinquent in payment of any taxes, (due under the Sales and Use Tax Law and other tax laws), when those liabilities arise in whole or in part out of exercise of the privilege of the license. 1/18/91.

[535.0073](#) **Self-Help.** The two principal stockholders of a corporation made a decision to discontinue their business association. They each obtained a portion of the equipment owned by the corporation and operated similar businesses separately. This "self-help" to the obtaining of business equipment does not constitute a sale such as to cause application of successor liability. The corporate assets are still owned by the corporation and may be levied upon to satisfy the corporate tax debt. The distribution of assets to a shareholder may be recovered by the corporation or by its receiver, liquidation or trustee in bankruptcy if the distribution was made without a court order or without adequate provisions made for payment of the debts of the corporation (see California Corporation Code 5012). 2/25/77.

[535.0073.090](#) **Service Business.** A taxpayer is engaged in a trucking business. He also has a truck selling business for which he has a Department of Motor Vehicles license and a seller's permit. He disposes of used trucks from the trucking business in this selling operation. Substantially all of the assets of the trucking business and the truck selling business are exchanged for first issue stock, the assumption of a liability, and a note.

The taxpayer has incurred a large tax liability primarily from ex-tax out-of-state truck purchases used in the trucking business. The assets of the trucking sales business, which are transferred involve \$50,000 of the total consideration. Those of the trucking business represent \$5.9 million of the purchase price. The successor corporation's successor liability is limited to the \$50,000 related to the trucking business.

The purchase price related to the transfer of the service business is not subject to the successor liability provisions of sections 6811 and 6812. 3/16/90.

535.0073.300 **Spouse.** A spouse is not a purchaser of a business when the business is bequeathed to the spouse by the owner. The estate of the deceased is liable for debts of the deceased. 10/4/89; 7/10/96.

[535.0074](#) **Successor Liability—Transfer in Lieu of Foreclosure.** A former seller of property who reacquires property by deed in lieu of foreclosure when the only consideration received by the purchaser-mortgagor is cancellation of unpaid balance may not be held for successor's liability. There is no "sale" when a mortgagee reacquires property under these circumstances. Thus, there is no "purchase" within the meaning of section 6812.

On the other hand, the transfer of property acquired by deed in lieu of foreclosure by mortgagees who were not also the sellers of the property are liable as successors. In this case, the transfer is a "sale" and "purchase." (See also Annotation 365.0040.) 10/23/95.

[535.0074.500](#) **Successor's Liability.** Mr. and Mrs. A entered into an agreement to purchase the stock of a corporation from the owners, Mr. and Mrs. B. The collateral for the promissory notes given by Mr. and Mrs. A to the sellers consisted of corporate assets, i.e., furniture, fixtures, and equipment. Mr. and Mrs. B assigned the notes to their Revocable Trust. After operating the business for several years, Mr. and Mrs. A defaulted on payments due under the promissory notes and the trust "foreclosed" on the security interest retained for the sale of the stock. Mr. and Mrs. A and the trust entered into an "Agreement for Repossession of Collateral in Satisfaction of Debt" whereby Mr. and Mrs. A would turn over all of the corporation's tangible personal property to the original sellers, Mr. and Mrs. B, in satisfaction of the promissory notes. Mr. and Mrs. B then took out a seller's permit under their name and continued to operate the business.

Mr. and Mrs. A owed the Board taxes for their period of operating the business, and the Board issued a successor's liability against Mr. and Mrs. B.

When the trust "foreclosed" on the security interest retained for the sale of the corporation's stock, the agreement entered into at that time transferred the corporation's tangible personal property to the trust for a consideration. Under *Knudsen Dairy Products Co. v. State Bd. of Equalization* (1970) 12 Cal.App.3d 47, the purchase price need not necessarily flow directly to the seller. The trust, therefore, purchased the corporation's property. Mr. and Mrs. A turned over the corporation's property to the Mr. and Mrs. B trust in exchange for satisfaction of their personal debt to Mr. and Mrs. B. Mr. and Mrs. B obtained the property from the trust and continued the business. Furthermore, since the sale by Mr. and Mrs. B was a sale of stock and not a sale of tangible personal property, they may not utilize California Commercial Code section 9505 to dispose of the collateral in lieu of foreclosing under a security agreement. Accordingly, Mr. and Mrs. B as purchasers of the tangible personal property were also "successors," and the successor liability was properly imposed. 5/28/97; 3/18/97.

535.0075 **Successor's Liability—Formation of Partnership.** C and B formed a partnership to operate a new car dealership. C, who was already engaged in the business of selling cars, contributed all of his individual sole proprietorship assets and known liabilities to the partnership. A certificate of release from successor's liability was not requested by the new partnership. A subsequent audit of C's sole proprietorship disclosed a liability for unpaid sales taxes. The partnership paid various other liabilities assumed from C's sole proprietorship, but not the audit liability. The partnership then dissolved with all the assets being assigned to B along with the assumption of partnership liabilities.

The failure to withhold from the purchase price an amount to cover C's tax audit liability caused the partnership to be liable for that tax as a successor. There is no distinction between a situation where a buyer pays a sum of money to a seller, who then pays the money to a creditor, and the short-cut method followed here where the buyer pays the money directly to the seller's creditors. In these circumstances, a partnership liability for C's taxes was created and it is included in the liabilities assumed by B when the partnership was dissolved. 8/21/41.

535.0076 Successor's Liability—In General. A taxpayer incurred a substantial audit liability. The taxpayer subsequently sold approximately 90% of its assets and related business activities which were conducted from a single location to a new unrelated corporation. The taxpayer continued to operate the other 10% of the business. It later sold the assets and stock of goods of the remaining 10% of the business. The audit liability was still outstanding at the time of the second sale.

Any liability the taxpayer has incurred in its operation of the business will follow the taxpayer, and a purchaser of the remaining business must withhold a sufficient amount of that purchase price to cover any liability of that business, including any debt from the prior (90%) sale of the business. If the purchaser fails to withhold as required, the purchaser becomes personally liable for the amount required to be withheld to the extent of the purchase price. (Section 6811 and 6812.)

However, if the taxpayer moved the remaining portion of the business out of state and then it sold the 10% of business or stock of goods which was located out of state to a nonresident of California who would have no intention of doing business in California, the purchaser would not have purchased the business in California. The purchaser would be outside the state's jurisdiction and the Board would not have the authority to impose successor liability. 12/7/93.

535.0078 Successor's Liability as an Independent Liability. The provisions of the Sales and Use Tax Law do not provide that the liability of the successor is akin to a surety or that the Board must first exhaust its remedies against the seller. Rather, it is an independent liability that arises by reason of the purchase of the seller's business or stock of goods without a clearance from the Board or without withholding a sufficient portion of the purchase price to cover unpaid taxes. The underlying basis is that the purchaser should be held liable because of the acquisition of the seller's assets that were previously available to satisfy the seller's liability to the Board. 3/21/91.

535.0080 Withholding by Purchaser. A taxpayer was liable for unpaid sales and use taxes due from his predecessor because he purchased a used car business and failed to withhold from the purchase price the sales taxes due the state. The predecessor's used car business, which was one of the several businesses of the corporation, failed to report some of the used car sales it made. The taxpayer subsequently purchased the accounts receivable of the used car business and all the stock in trade. The car dealer also took over and operated the car lot of the business. No amount was withheld from the purchase price to pay for the tax liability of the seller, even though there were no certificates of release from the State Board of Equalization. 12/22/71.

535.0087 Purchase from Probate Estate. An inquiry was received regarding whether successor's liability can be asserted against a person who bought a business from a probate estate. It appeared that the property purchased was inventory. It was also noted that the estate did not operate the business.

It is concluded that the Legislature intended that Probate Code section 707.5 to be the sole and exclusive method for settling debts of decedents, and that attempting to inject successor's liability would interfere with the orderly administration of probate estates. In addition, the language of section 6811 prohibits the imposition of successor's liability in probate estates. This section requires that the delinquent taxpayer must either sell or quit the business before successor's liability arises. Since death prevented a sale or a quitting of the business, no seller/purchaser relationship existed prior to death and probate administration. Therefore, a purchase from a probate estate does not result in successor's liability. 7/8/80.

535.0090 Purchase of Realty and Equipment. Where the purchaser bought the realty and equipment of a business which held a seller's permit, began a dissimilar type of business, did not exercise an option to purchase the seller's trade name, customer list, accounts receivable, and did not obtain a covenant not to complete, the purchaser was not a successor for the purpose of Regulation 1702. 6/26/78.

535.0092 Transfer of Membership Interests in a Limited Liability Company. A limited liability company ("LLC") does not terminate upon transfer of membership interests unless specified in an agreement of the members. Therefore, in the absence of such an agreement, the transfer of a LLC

membership interest is treated as a transfer of intangible personal property the sale of which is not subject to sales tax. 12/29/00. (2002-1).

535.0093 Transfer to Avoid Tax Liability. A taxpayer was issued a notice of determination on March 11, 1982. On February 22, 1983, he executed a declaration of a gift of all of the equipment of the business to his wife. On December 31, 1983, he closed out his seller's permit. On December 28, 1983, his wife took out a seller's permit for the business in a corporate name effective January 1, 1984. A notice of successor's liability was issued against the corporation. The corporation has objected to the successor's billing on the basis that there was no consideration.

Successor liability is asserted under these circumstances. The sole purpose for the transfer of the property was an attempt to avoid sales tax liability. To cancel the successor liability would defeat the general purpose of the law and permit the perpetration of fraud. 11/6/84.

535.0095 Transfer without Consideration . Entity A ceased operation of its business. In the same month, B, a former employee of A, secured a seller's permit and commenced the operation of a similar business at the same location under a different name. B dealt with some of the same suppliers as A and retained A's telephone number. The business sign continued to show A's business name. There was no evidence of any payment from B to A for the business, or that B assumed any debts of A's business.

Where a tax debtor transfers the business or stock of goods without assumption of liabilities or other consideration from the transferee, the transferee does not become liable as a successor for the tax debt of the transferor. There is no purchase price from which the transferee can withhold amounts for payment of tax. 7/15/94.

535.0100 Trusts. Absent any consideration given to the trustor for property placed in a trust, the successor liability statute does not apply. (see Sales and Use Tax Regulation 1702(a)). 8/8/89.

535.0800 Withhold by Purchaser—No Transfer of Cash. Corporation A holds a perfected security interest in Corporation B's inventory, equipment, receivables, and accounts to secure a promissory note and accounts receivable due from B to A. A is contemplating foreclosing on its security interest. A is also considering purchasing certain intangible property owned by B which is not encumbered by A's security interest. The consideration for the purchase of intangibles would be a credit or set off against B's indebtedness to A. If A acquires the intangible properties of B, it intends to operate B's business using the tangible personal property it expects to acquire through foreclosure. If A does not acquire the intangible property, it intends to resell the tangible personal property to an unrelated third party.

Even though A does not transfer any cash to B, A is liable for payment of B's unpaid sales tax if A completes the scenario as described above. The term "withhold" in section 6812 simply means dealing with purchase consideration in such a manner as to deny to the seller the benefit of the purchase consideration and to thereby make a portion of it available for satisfaction of the tax liability. (*Knudsen Dairy Co. v. State Board of Equalization* (1970) 12 Cal.App.3d 47, 55.)

If, instead of the method discussed above, the tangible assets are actually acquired by a duly conducted foreclosure action, rather than a voluntary surrender or repossession, and A is the successful bidder at the foreclosure sale, this transaction would fall within the transfers pursuant to foreclosure of a mortgage exception to successor liability contained in Regulation 1702(a). Thus, A would not be liable for B's unpaid tax liability. 7/1/96.