

Memorandum

To : Mrs. Janice Masterton

Date : July 1, 1991

From : Mary C. Armstrong

Subject: Contribution Disclosure Opinion No. 91-19
Successor Liability Under Sales and Use Tax Law

This is in response to your memorandum of June 6, 1991 in which you ask the following:

"When a petition for redetermination of successor liability under the sales & use tax law is before the Board, is the predecessor a participant? Is the predecessor's representative an agent?

Revenue and Taxation Code Section 6814 provides for successor liability as follows:

In every case of successor liability, the predecessor is also liable for the amount of tax due. However, the successor may not be either a "party" or a "participant" to the adjudicatory proceeding pending before the Board. A "party" is "any person who is the subject of an adjudicatory proceeding pending before the Board." (§ 15626(h)(2).) When a petition for redetermination is brought against a successor, the predecessor is not the party. The predecessor is not a "participant" under Section 15626 unless (the) predecessor "actively supports or opposes a particular decision in the adjudicatory proceeding pending before the board and...has a financial interest in the decision" Although the predecessor has a financial interest, in that payment by the successor extinguishes the predecessor's liability, the disclosure/disqualification requirements of Section 15626 are not present unless the predecessor also "actively supports or opposes a particular decision" by "lobby(ing) in person the members or employees of the board, testify(ing) in person before the board, or otherwise act(ing) to influence the members fo the board." Mere financial interest is not enough to place the predecessor in the role of a "participant" as that term is used in Section 15626. In

Mrs. Janice Masterton

-2-

July 1, 1991

addition, a predecessor's representative would be considered an agent under Section 15626 only if the predecessor was a "party" or "participant".

Mary Armstrong

MCA:wk
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cc: Honorable Brad Sherman
Honorable Ernest J. Dronenburg, Jr.
Honorable William Bennett
Honorable Matthew K. Fong
Honorable Gray Davis
Ms. Cindy Rambo
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