

Memorandum

To : Ms. Cynthia Bridges
Executive Director (MIC 73)

Date : April 9, 2015

From : 
Mr. Jeffrey L. McGuire, Deputy Director
Sales and Use Tax Department (MIC 43)

Subject : **Board Meeting April 28-30, 2015**
Item N: Administrative Agenda
Proposed Revisions to Compliance Policy and Procedures Manual
Sections 732.080, 761.045, and 776.110

I am requesting approval to forward the attached revision to CPPM chapter 7, *Collections*, to the Board Proceedings Division to be placed as a consent item on the Administrative Agenda at the April 2015 meeting.

CPPM section 732.080, *Purchase of Fixtures, Equipment, or Stock of Goods*, is being revised to advise staff of information available from schedules filed with the Internal Revenue Service (IRS) when there is a sale of a business. Section 761.045, *Payments by Credit Card – Release of Lien*, is being added to incorporate the current policy regarding the treatment of credit card payments when determining if a lien may be released. Section 776.110, *Small Balance – Does Not Justify Further Collection Effort*, is being revised to increase the dollar threshold to be considered a “small balance” from \$2,000 to \$5,000.

These revisions have been reviewed and approved by SUTD management, provided to Board Members, and posted on the Board’s website at <http://www.boe.ca.gov/sutax/pmr.htm> to solicit comments from interested parties. No comments were received from Board Members or other interested parties.

If you have any questions, please let me know, or contact Ms. Susanne Buehler at (916) 324-1825.

JLM:rs
Attachment

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the April 29, 2015 Board Meeting

Joann Richmond
Joann Richmond, Chief
Board Proceedings Division

Approved


Ms. Cynthia Bridges
Executive Director

cc: (all with attachment)
Mr. David Gau (MIC 101)
Mr. Wayne Mashihara (MIC 46)
Ms. Susanne Buehler (MIC 92)
Ms. Lynn Bartolo (MIC 57)
Mr. Richard Parrott (MIC 88)
Mr. Kevin Hanks (MIC 49)
Mr. John Thiella (MIC 73)
Mr. Marc Alviso (MIC 101)
Mr. Chris Lee (MIC 101)
Mr. Gary Lambert (MIC 43)

PURCHASE OF FIXTURES, ~~AND~~ EQUIPMENT, OR STOCK OF GOODS ~~OR PART~~ OF A BUSINESS

732.080

Before a purchaser can be held liable as a successor, the fact, that “a business or stock of goods” has been purchased must be established. If the purchase involved only an item or items such as fixtures, equipment, name, lease or a liquor license, successor’s liability is not necessarily applicable.

If the purchaser acquired only a portion of the business or stock of goods of the seller, the portion purchased must be substantial in order to assert successor’s liability. In all cases where there is doubt as to whether the purchaser has acquired sufficient of the predecessor’s business to become liable as a successor, a comprehensive report should be submitted to the next level of supervision for possible referral to the ~~Special Procedures Section (SPS)~~ Special Operations Branch (SOB).

One source of information for determining whether there was a sale of a business or stock of goods is the taxpayer’s returns filed with the Internal Revenue Service (IRS). The IRS requires taxpayers to file Form 8594, *Asset Acquisition Statement*, when there is a transfer in the ownership of a business. IRS Form 4797, *Sales of Business Property*, is required when there is a sale of a group of assets that makes up a trade or business. The information contained on these forms may help in determining the value of fixtures, equipment, or other assets when a business is sold.

Bulk Sale of a Business – IRS Form 8594

IRS Regulation section 1.1060-1(e)(1)(ii) and Internal Revenue Code (IRC) section 338 require that both the buyer and seller in an applicable asset acquisition report on Form 8594 the amount of consideration in the transaction and specific information about the allocation of consideration among the assets transferred.

Both the seller and the buyer of a group of assets that make up a trade or business are required to file Form 8594 to report such sales if goodwill or going concern value attaches to, or could attach to, the assets and if the buyer’s basis in the assets is determined only by the amount paid for the assets. Generally, Form 8594 would be attached to the Federal Income Tax Return for the year in which the sale occurred. However, a supplemental Form 8594 must be filed if the buyer or seller is amending a previously filed form because of an increase or decrease in the buyer’s cost of the assets or the amount realized by the seller.

The information that must be reported on Form 8594 includes the following:

1. Name, address, and taxpayer identification number of the buyer and seller
2. Purchase date
3. Total consideration for the assets
4. Amount of consideration allocated to each class of assets and the aggregate fair market value of assets of each class

5. Statement as to whether the buyer and seller agreed upon the fair market value of the assets in the contract of sale
6. The useful life of each class III intangible and amortizable asset - Class III assets are all tangible and non-tangible assets (e.g. furniture and fixtures, land, buildings, equipment, and accounts receivable)
7. A statement as to whether, in connection with the acquisition of the group of assets, the buyer also obtained a license, a covenant not to compete, or entered into a lease agreement, an employment contract, a management contract, or similar arrangement between the buyer and the seller (or the managers, directors, owners, or employees of the seller).

Exceptions to the requirement for filing IRS Form 8594 include the following:

1. The acquisition is not an applicable asset acquisition. An applicable asset acquisition includes both a direct and indirect transfer of a group of assets, such as a sale of a business, if goodwill or going concern value attaches to, or could attach to, the assets, and the buyer's basis in the assets is wholly determined by the amount paid for the assets.
2. A group of assets that makes up a trade or business is exchanged for like-kind property in a transaction to which IRS Regulations section 1.1031(j)-1 applies. Generally, for a like-kind exchange, there must be a property-by-property comparison for computing the gain recognized.
3. A partnership interest is transferred.

Sale of Business Property – IRS Form 4797

IRS Form 4797 is used to report the sale or exchange of property used in a trade or business; depreciable and amortizable property; oil, gas, geothermal, or other mineral properties; and IRC section 126 (certain cost-sharing payments) property. Form 4797 is also used to report the following:

1. The involuntary conversion of property used in a trade or business and the capital assets held in connection with a trade or business or a transaction entered into for profit, as well as the disposition of non-capital assets other than inventory or property held primarily for sale to customers in the ordinary course of a trade or business.
2. The disposition of capital assets not reported on IRS Schedule D.
3. The recapture of IRC section 179 expense deductions for partners and S corporation shareholders from property dispositions by partnerships and S corporations. The deduction allows for up to the entire cost of certain depreciable business assets, other than real estate, in the year purchased, which may be used as an alternative to depreciating the asset over its useful

life. Taxpayers cannot use the IRC section 179 deduction to the extent that it would cause them to report a loss from their business.

4. The computation of recaptured amounts under IRC section 179 and IRC section 280F(b)(2), when the business use of section 179 or listed property drops to 50% or less (IRC section 179 - The limitation on depreciation for luxury automobiles; limitation where certain property is used for personal purposes).

Requesting Copies of Forms

Staff should request a copy of IRS Forms 8594 and 4797 from the taxpayer to determine the sales price of the tangible personal property when it is either sold or transferred under the conditions covered in this section. If the information is not readily available from the taxpayer, staff may request the information following the procedures outlined in CPPM section 720.031.

PAYMENTS BY CREDIT CARD – RELEASE OF LIEN

761.045

Credit card payments will be treated as cash payments for the purpose of lien releases. Prior to releasing a lien for a liability paid by credit card, the payment must be verified in the Integrated Revenue Information System (IRIS).

SMALL BALANCE - DOES NOT JUSTIFY FURTHER COLLECTION EFFORT

776.110

Reason code eight is “Small balance - does not justify further collection effort.” A district compliance supervisor will approve these types of accounts after a reasonable effort has been made to collect the liability. To avoid costly collection efforts out of proportion to the amount to be realized, SOB will process district-approved requests for write off of balances of \$500.01 through \$25,000.00 on closed-out accounts. Only a minimum explanation of previous collection efforts will be required from the districts. (See CPPM section 776.180 for automatic write off of balances of \$10.01 through \$500.00.)

A reasonable effort is defined as collection effort(s) where the cost is commensurate with the amount to be realized. For example, conducting a number of field calls to collect an item of less than \$25,000 goes beyond a reasonable effort.

SOB will generally accept and approve write offs for small balances on closed-out accounts when the amount of tax, penalty and interest is \$500.01 through \$25,000 and the account meets the following conditions:

1. The account is not a Consumer Use Tax account.
2. For accounts where an individual may be held liable in any manner, an offset with the Franchise Tax Board must be attempted and sufficient time must pass for the offset to be effective (usually September 30 of the year following the offset request).
3. Department of Motor Vehicles, Employment Development Department and real property records must be checked for assets.
4. A search of the online system must be conducted for other permits held by the taxpayer.