

M e m o r a n d u m

To : Mr. Ramon J. Hirsig
Executive Director (MIC 73)

Date: March 4, 2010

From : 
Randie L. Henry, Deputy Director
Sales and Use Tax Department (MIC 43)

Subject : Board Meeting, March 23 – 25, 2010

Item N**Administrative Agenda****Proposed Revisions to Audit Manual Section 1005.30, *Mergers***

Attached are proposed revisions to Audit Manual (AM) section 1005.30, *Mergers*. We request your approval to place the proposed revisions on the Administrative Agenda for Board approval. These revisions streamline the process of obtaining a certified copy of the merger agreement from the Secretary of State and add contact information regarding out-of-state mergers.

The proposed revisions were previously provided to Board Members, and posted at <http://www.boe.ca.gov/sutax/staxmanuals.htm> on the Board's website for two months to solicit comments from interested parties. We received no comments from the public.

If you have any questions, please let me know or contact Mr. Jeff McGuire at 324-1825.

Attachment: Copy of revised AM section 1005.30

RLH:nvm

Approved:



Ramon J. Hirsig
Executive Director

cc: (all without attachments)
Mr. Stephen Rudd (MIC 46)
Ms. Freda Orendt (MIC 47)
Mr. Jeff McGuire (MIC 92)
Mr. Kevin Hank (MIC 49)
Ms. Kelly Reilly (MIC 47)
Ms. Erin Little (MIC 46)

MERGERS AND REORGANIZATION¹

1005.30

When a corporation is involved in a merger or reorganization, sales tax may or may not apply to the transfer of assets, depending on the manner in which the transfer is accomplished.

When Sales Tax May Apply: in situations which follow:

- a) Transfers of assets of a constituent corporation pursuant to a corporate reorganizations that does not qualify as a statutory merger pursuant to under the California Corporations Code or similar laws of other states.
- b) Transfers of assets of a constituent corporation treated as a corporate reorganization under the Internal Revenue Code, regardless of even if there is nowwhether or not federal income tax liability is incurred.

When Sales Tax Does Not Apply: to:

Transfers of assets from a disappearing corporation to a surviving corporation pursuant to a statutory merger as set forth in Sections 1100-1305 of the California Corporations Code or similar laws of this and other states.

A merger pursuant to a statutory merger is exempt as an occasional sale (AM section 1004.10). The determination of whether a merger qualifies as a statutory merger is within the jurisdiction of the Secretary of State (SOS) and not the Board of Equalization. Section 1103 of the California Corporations Code provides for filing the agreement with SOS. Such California statutory mergers are evidenced by a merger agreement that carries a filing stamp showing it has been filed with the Secretary of State as certifiedeated by the Secretary of State's OfficeSOS. The certified copy of the merger agreement issued by the Secretary of StateSOS may be accepted as proof that the merger agreement conforms to California's statutory requirements.

Procedures for Obtaining Certified Copy of a Merger Agreement

NOTE: Whether or not an agreement qualifies as a statutory merger is within the jurisdiction of the Secretary of State and not the Board of Equalization. Section 1103 of the Corporation Code provides for filing the agreement with the Secretary of State. If evidence of the such a filing of a merger agreement is not available, to the field auditordistrict office, should a request a certified copy of the merger directly to inquire withfrom the Secretary of StateSOS, may be directed through channels to the Program Planning Manager withand copy correspondence copy sent to the appropriate Chief of Field Operations on all correspondence. The request must be in writing using either the Corporation - Records Order Request Form (Exhibit 2) or the Limited Liability Company - Records Order Request Form (Exhibit 3), as applicable. The fees for certified copies of merger agreements are listed on the form. The Board's billing code (24000) must be indicated on the form.

SOS will mail the certified copies of the merger agreements to the requestor within eight to nine weeks of receiving the request. Alternatively, requests for certified copies of merger agreements may be made in person at the SOS office. The copies will be available for pick-up within five business days.

A merger not being made pursuant to a statutory merger may nevertheless be exempt as an occasional sale. (See Section 1004.10.)

¹ These procedures apply only to statutory mergers pursuant to California law. The Audit and Information Section (MIC 44) should be consulted regarding procedures for obtaining a certified copy of a merger agreement from another state.



Secretary of State
Business Programs Division

1500 11th Street, 3rd Floor
P.O. Box 944260
Sacramento, CA 94244-2600

Certification and Records
(916) 657-5448

LIMITED LIABILITY COMPANY – RECORDS ORDER REQUEST FORM

THIS REQUEST IS BEING PROCESSED FOR: (Please type or print legibly.)

Name: _____ Date: _____
 Address: _____ Phone #: _____
 City/State/Zip: _____ Return Method: Mail Back Pick Up
 Attn: _____

ENTITY NAME: _____

ORDER REQUEST: (Check the applicable box(es). If requesting a copy, indicate if a plain (uncertified) or certified copy is requested.) Quantity

- Copy of Initial Filing (formation/registration document) plain certified { }
- Copy of ALL Amendments (to the initial filing) plain certified { }
- Certificate of Status (e.g., good standing, cancelled, etc.) { }
- Certificate of _____ { }
- Copy of Statement of Information (last complete) plain certified { }
- Copy of ALL Statements of Information plain certified { }
- Copy of _____ plain certified { }
- Status Report (computer printout of status and agent for service of process information - not certified) { }

FEES	SECRETARY OF STATE USE ONLY
Special Handling Fee* \$10.00 per entity name	
Copy Fee \$ 1.00 for the first page \$.50 each additional page	
Copy Fee (Statements of Information only) ... \$ 1.00 for the first page \$.50 each additional page	
Certification Fee (in addition to copy fee) \$ 5.00 each	
Certificate \$ 5.00 each	
Comparison Fee \$ 3.00 each document	
Status Report (no special handling fee) \$ 4.00 each	
*Special Handling Fee	
<ul style="list-style-type: none"> • In addition to the certificate or copy fees (order fees), a \$10.00 special handling fee is applicable for processing a certificate or copy request delivered in person at the public counter. The request, along with the order and special handling fees, can be dropped off and will be processed in priority over requests submitted by mail. Since processing times will vary, the "Mail Back" box can be checked to have the response to the request returned by mail to the address provided above. Note: If neither the "Mail Back" nor "Pick Up" box is checked, the response to the request will be returned by mail. • The \$10.00 special handling fee must be remitted by separate check for each request and will be retained whether the request is completed or rejected. • Please make both checks payable to the Secretary of State. 	
	Affix Cert & Seal _____ copies \$ _____
	Making copy _____ pages \$ _____
	Certificate of _____ \$ _____
	Statement of Information _____ \$ _____
	Special Handling Fee _____ \$ _____
	Status Report _____ \$ _____
	Other _____ \$ _____
	<input type="checkbox"/> CK <input type="checkbox"/> MO <input type="checkbox"/> CASH <input type="checkbox"/> CC
	TOTAL DUE \$ _____