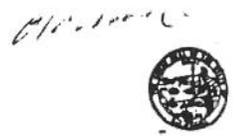


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Executive Director

December 21, 1995

Re: Unidentified Taxpayer;  
Sale of Business

Dear Mr.

This is in response to your letter dated October 4, 1995 regarding the application of tax to the sale of assets from a corporation to a limited liability company.

You state:

“The entity in question is a Washington State corporation. The corporate business operations are physically located in the State of California. The owners are planning to form a Washington State limited liability company (LLC) and would have the corporation sell its tangible personal property to the LLC. The business will continue to be operated at the same site.

“The assets that will be sold by the corporation to the LLC at fair market value will consist of inventory (both parts and work in progress), furniture and fixtures, machinery and equipment (used in the manufacturing process), technical library, patents, leasehold improvements, and land and buildings.”

You ask what state or local taxes apply to this sale and the effective rate of these taxes. You also ask what taxes apply to the transfer of the corporation’s real estate, intangible assets and inventory. For purposes of this letter, we assume that the LLC will be owned by all the shareholders of record of the corporation at the time of the sale of assets by the corporation to the LLC. We also assume that all of the

corporation's tangible personal property is located inside this state. If these assumptions are incorrect, our opinion below would be different.

### Discussion

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) A sale includes any transfer of title or possession, in any manner or by any means whatsoever, of tangible personal property for a consideration. (Rev. & Tax. Code § 6006(a).) Where sales tax does not apply, use tax is imposed on the sales price of property purchased from a retailer for the storage, use, or other consumption in California. (Rev. & Tax. Code §§ 6201, 6401.)

Revenue and Taxation Code section 6367 provides an exemption from sales tax for the occasional sale of tangible personal property other than vehicles, vessels, or aircraft.<sup>1</sup> Revenue and Taxation Code section 6006.5(b) defines an occasional sale as any transfer of all or substantially all the property held or used by a person in the course of those activities where after the transfer the real or ultimate ownership of the property is substantially similar to that which existed before the transfer. Title 18, California Code of Regulations (hereafter "Regulation"), section 1595(b)(2)<sup>2</sup> further interprets Revenue and Taxation Code section 6006.5(b) as follows:

"Tax does not apply to a transfer of all or substantially all the property held or used by a person in the course of activities for which the person is required to hold a seller's permit or permits or would be required to hold a seller's permit or permits if the activities were conducted in this state, provided that after the transfer the real or ultimate ownership of the property is substantially similar to that which existed before such transfer.

'Substantially all the property' means 80 percent or more of all the tangible personal property held or used in the course of activities, including tangible personal property located outside of this state. If a person engages in two or more separate selling activities, for each of which the person is required to hold a seller's permit or would be required to hold a seller's permit if the activity were conducted in this state, a transfer of 80 percent or more of the tangible personal property held or used in the combined activities must be made in order to qualify for the exemption described in this paragraph. Stockholders, bondholders, partners, or other persons holding an ownership interest rather than a security interest in the corporation or other entity are regarded as having the real or ultimate ownership of the property of the corporation or other entity.

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<sup>1</sup> A sale of a vehicle, vessel, or aircraft is exempt as an occasional sale when such property is included in a transfer of all or substantially all the property held or used in the course of business activities of the person selling the property and the real or ultimate ownership of the property is substantially similar to that which existed before such transfer. (Reg. 1595(c).)

<sup>2</sup> A copy of Regulation 1595 is enclosed for your review.

December 21, 1995

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"The real or ultimate ownership is "substantially similar" to that which existed before a transfer if 80 percent or more of that ownership of the tangible personal property is unchanged after the transfer...."

You state that the owners of the corporation are planning to form a LLC in the state of Washington. The corporation will then sell all its real and personal property to the LLC. We understand this to mean that the corporation will transfer 100 percent of its tangible personal property to the LLC and that the ultimate ownership of this property will be the same (i.e., the owners of the LLC will be the same persons who owned the stock of the corporation). Under these facts, the corporation's sale of its tangible personal property to the LLC is exempt from tax as an occasional sale since the corporation will transfer at least 80 percent of the tangible personal property it held or used for its activities requiring a seller's permit to the LLC. Tax also does not apply to the corporation's transfer of its resale inventory or intangible assets to the LLC.

You also ask what taxes apply to the sale of the corporation's real property to the LLC. In that regard, you should contact the property tax assessor's office where the real property is located for an explanation of the application of tax and corresponding rates.

Please note that Revenue and Taxation Code section 6596 sets forth the circumstances under which a taxpayer may be relieved of liability for taxes when relying on a written response to a written request for opinion. To come within that section, the request for opinion must identify the taxpayer as well as all relevant facts relating to the particular transaction. Our opinion above does not come within section 6596 since you have not identified the taxpayer subject to the foregoing transaction.

If you have any further questions, please write again.

Sincerely,



Warren L. Astleford  
Staff Counsel

WLA:rz

Enclosure - Reg. 1595

cc: Out of State District Administrator - OH