

REL. 1661

(916) 445-2641

395,229/
(3 pgs)

219. OF PARTNERSHIP
SALE BY PARTNER
OF INTEREST FORM
PARTNERSHIP LCA
DATE BY
PARTNERSHIP

August 16, 1976

Dear

This is in response to your letter of July 30, 1976, which was directed to our Hollywood office. Your letter was referred to this office for reply.

The transaction in question concerns a general partnership named _____ whose principal offices are located in _____. For a number of years, the sole business of the partnership has been to lease trucks and equipment to one corporation. The partnership at no time makes sales to anyone. It does not have a seller's permit, none being required. All trucks and equipment leased by the partnership were purchased in transactions for which sales tax reimbursement was collected. All trucks and equipment are leased in substantially the same form as originally purchased.

The partnership is comprised of three related individuals, A, B, and C for convenience. It is contemplated that the partnership will be terminated and its assets distributed to the partners in liquidation. Each partner will receive a 1/3 undivided interest in all assets which consist entirely of the trucks and equipment. Upon liquidation of the partnership, partners B and C will sell each of their 1/3 undivided interests to individuals D and E. The purchase price for each 1/3 interest is approximately \$29,000, a figure arrived at in arms length negotiations.

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August 16, 1976

A, D, and E will then form a new partnership and each will transfer his 1/3 interest in the trucks and equipment to the new partnership as a capital contribution. The new partnership will continue to engage solely in the business of leasing the trucks and equipment (in substantially the same form as originally purchased) to the same corporation.

* * * * *

First, the termination of the partnership and the distribution of the assets in liquidation to the partners will not occasion the application of a tax. This transaction is not regarded as a "sale," which is defined as a transfer of title of tangible personal property for a consideration. [Rev. & Tax. Code § 6006.]

Second, the sale by partners B and C of their interests in the assets acquired by them in the liquidation would be subject to the tax to the extent that the assets include vehicles taxable under Chapter 3.5 of the Sales and Use Tax Law. Assuming that partners B and C are not licensed or certificated pursuant to the Vehicle Code as dealers, the applicable tax will be a use tax payable by purchasers D and E. The measure of tax with respect to the vehicles would be that portion of the \$29,000 purchase price attributable to the transfer of the vehicles. [Rev. & Tax. Code §§ 6275, 6282, 6292.]

Third, the transfer by A, D, and E of assets to a new partnership as a capital contribution will not occasion the application of a tax. [Reg. 1595(b)(4), copy enclosed.]

Fourth, the lease transactions between the new partnership and the corporation will be subject to tax to the extent that the items leased do not qualify as mobile transportation equipment. The tax will apply because the property will not be "taxpaid" in the hands of the lessor, the new partnership. The new partnership will not have an election to place the nonmobile transportation assets on a "taxpaid" basis since the assets would have been acquired in a tax-free transaction. Further, the "taxpaid" status would not carry over since the "transferor" would be A, D, and E as individuals and not the terminating partnership. [Rev. & Tax. Code §§ 6006, 6010.]

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Fifth, to the extent that the new partnership is leasing mobile transportation equipment, these leases will not be regarded as sales and the tax will not apply. We note that the for-hire limitation on mobile transportation equipment was removed effective January 1, 1972. Thus all transportation equipment except passenger vehicles as defined in Section 465 of the Vehicle Code, trailers and baggage containers designed for hauling by passenger vehicles, or "one-way rental trucks" qualify as mobile transportation equipment. [Rev. & Tax. Code §§ 6006, 6010, 6023, 6024.]

Very truly yours,

Gary J. Jugum
Tax Counsel

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Enclosure