



535.0060.325

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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April 22, 1996

E. L. Sorensen, Jr.
Executive Director

J--- F. M---, Esq.
---, --- & ---
Attorneys at Law
XXX --- --- Avenue
---, California XXXXX-XXXX

Re: W--- V--- T---
Account No. SY -- XX-XXXXXX-001

Dear Mr. M---:

This office has received your letter dated April 16, 1993, in which you acknowledge receipt of our letter to you dated March 11, 1996. In your letter you state that you

“[r]espectfully challenge [the Board] to describe a method of making payment to the State Board which would not have violated C---’s superior right to cash (even though there wasn’t any) and which would not have resulted in W--- V--- agreeing to pay more for the goods than they were worth, i.e. more than the parties bargained for.”

In any prospective purchase and sale of inventory from one company to another, the potential purchaser must determine if the price of the inventory is reasonable in consideration of all of the factors involved. One of those factors is the possibility that the potential purchaser will become liable for the seller’s sales tax liability pursuant to Revenue and Taxation Code section 6811. A potential purchaser may request a tax clearance certificate from the Board disclosing the seller’s sales tax liability. The potential purchaser can then require that the seller pay its tax liability to the Board as a condition of the purchase of the inventory. If the seller does not agree to this condition, the potential purchaser can refuse to purchase the inventory finding that the “price” to be paid for the inventory is too high.

The Board has imposed liability on W--- V--- T--- because it purchased the inventory of Q--- T---, Inc. without providing for the payment of the outstanding sales tax liability. The fact that the inventory may have been subject to a senior security interest is irrelevant. The Board is not imposing a superior lien on the inventory sold requiring W--- T--- to pay the Board, rather than C---, when inventory is sold. Liability is imposed on W--- T--- for the taxes due by Q--- pursuant to Revenue and Taxation Code section 6811. As with any tax liability, W--- V--- T--- may pay this liability from any assets that it possesses.

We cannot accept your contention that since there was no cash for W--- V--- T--- to withhold, W--- V--- T--- can escape liability under Revenue and Taxation Code section 6811. As we indicated in our letter to you dated March 11, 1996, the *Knudsen* case holds otherwise.

Very truly yours,

Thomas J. Cooke
Staff Counsel

TJC/cmm