

Memorandum

535.0074.500

To : Ms. Ruth Snyder
Compliance, --- Office

Date: May 28, 1997

From : Thomas J. Cooke
Tax Counsel

Telephone: (916) 445-6496
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Subject: A--- H--- and G---, Inc.
Permit No. SR -- XX-XXXXXX
R--- H--- and J--- H---
Permit No. SR -- XX-XXXXXX

The Legal Section has received your memorandum dated May 22, 1997 concerning the above taxpayers.

In your memorandum, you state that attorney S--- C---, on behalf of his clients, R--- and J--- H---, contends that successor's liability does not apply to his clients pursuant to the excluded transactions set forth in the California Administrative Code, at 18 C.C.R. Section 1702 and that the procedure for a secured party to retain the collateral in satisfaction of debt is specifically provided for in California Uniform Commercial Code section 9-505 as a manner of disposing of collateral in lieu of foreclosing under a security agreement.

The facts under which successor liability was imposed are stated in our earlier opinion dated March 18, 1997, a copy of which is attached.

In 1991, Mr. and Mrs. G--- entered into an agreement for the purchase of the stock of the corporation known as A--- H--- and G---, Inc. In the petition for redetermination, Mr. C--- states that the collateral for the promissory notes given by the G--- consisted of corporate assets, i.e., furniture, fixtures, equipment, etc. When Mr. C--- states that the G--- turned over the collateral to the H--- and renounced all of their rights in the collateral, Mr. C--- assumes that the G---, and not the corporation, had rights in the collateral. We find no ownership interest by the G--- or the H--- in the tangible personal property transferred to the H--- by the agreement dated August 2, 1996, prior to the execution of that agreement.

When the H--- “foreclosed” on the security interest retained for their sale of the corporation’s stock, the agreement dated August 2, 1996 transferred the corporation’s tangible personal property to them for a consideration. The H---, therefore, purchased the corporation’s property. If the corporation had sold the tangible personal property to the G---, the corporation may have utilized California Commercial Code section 9505 as a manner of disposing of collateral in lieu of foreclosing under a security agreement. Since the H--- were not “sellers” of tangible personal property, they may not assert that the August 2, 1996 agreement was a “foreclosure” substitute.

Since the H---, as “purchasers,” were also “successors,” successor liability was properly imposed.

TJC/cmm
Attachment

cc: --- District Administrator (--)