

The asphalt batch plant was purchased tax paid in 1960. Title was held jointly by the partnership of _____ and _____ (50%) and by _____ as an individual (50%). After _____'s death, title to the batch plant was held by the partnership formed by _____ and _____ (50%) and by _____ (50%), as an individual.

In 1965 _____ sold his 50 percent interest to _____. This was a taxable transfer and tax was reported and paid. Title to the batch plant was now held by a partnership consisting of _____ and _____ (50%) and _____ as an individual (50%). _____ and _____ formed a partnership and their interests in the partnership were the same as their ownership interests in the batch plant. The batch plant was used in the partnership and also rented to third parties, but it was not contributed to the partnership, i.e., title did not pass to this new partnership but continued to be held in joint ownership. _____ maintained records of his 50 percent ownership on his personal books and _____ and _____ on the books of their partnership.

On January 7, 1966, _____ sold her interest to _____ ex tax. Since that time the batch plant has been owned by _____ (50%) and _____ (50%) as individuals, and each carries his 50 percent interest on his personal books.

Sales and Use Tax Ruling No. 70 (California Administrative Code 2070) provides in section (c)(2) that "Tax does not apply to leases of:

* * *

"(F) Tangible personal property leased in substantially the same form as acquired by the lessor or leased in substantially the same form as acquired by a transferor as to which the lessor or transferor has paid sales tax reimbursement pursuant to section 6052 or has paid use tax pursuant to section 6202 or 6203 measured by the purchase price of the property. If tax is not paid at the time the property is acquired, and the lessor desires to pay tax measured by the purchase price, it must be reported and paid with the return of the lessor for the period during which the property is first placed in rental service.

"As used herein 'transferor' means:

"1. A person from whom the lessor acquired the property in a transaction defined as an 'occasional sale' in section 6006.5(b), or

"2. A decedent from whom the lessor acquired the property by will or by law of succession. The lessor who acquired property from a transferor must establish that the property is being leased in substantially the same form as acquired by the transferor and that the transferor paid sales tax reimbursement pursuant to section 6052 or paid use tax pursuant to section 6202 or section 6203 measured by the purchase price of the property."

This provision is based on Revenue and Taxation Code sections 6006(g)(5) and 6010(e)(5).

The board's audit staff, applying ruling 70, determined that all of the rental receipts from the construction equipment and 50 percent of the rental receipts from the asphalt batch plant, in the period in question, were subject to tax. The receipts from the batch plant attributable to the 50 percent interest purchased tax paid by [redacted] in 1965 were determined to be not taxable.

It is taxpayer's contention that the construction equipment and the batch plant were purchased tax paid within the meaning of ruling 70(c)(2)(F) and that tax does not apply to receipts from the rental of the property. Alternatively, he argues that the receipts from fractional interests which have always been held by [redacted] 50 percent in the case of the construction equipment and 25 percent in the case of the asphalt batch plant, should not be subject to tax. We do not agree.

The code and ruling require that the "lessor" or his "transferor" have paid the tax on the purchase price in order to remove the lease from the definition of "sale" and thereby avoid the imposition of tax on the rental receipts.

The "lessor" is the person who has leased property to another. Under Revenue and Taxation Code section 6005, the term "person" includes both any individual and any "copartnership".

While in some instances a partnership is recognized as only an association of individuals having no legal identity outside that of the partners, in other instances it is viewed as an entity separate and distinct from the partners. U. S. v. A & P Trucking Co. (1959) 358 U.S. 121, 79 S.Ct. 203, 3 L. Ed. 2d 165. DeMartini v. Industrial Accident Commission (1949) 90 Cal. App. 2d 137, 202 P. 2d 828; Artana v. San Jose Scavenger Co. (1919) 181 Cal. 627, 185 P. 850. In applying the Sales and Use Tax Law we have generally viewed a partnership as a distinct entity.

We hold, therefore, that where title to property is held by a partnership and the property is leased to a third party, the partnership, rather than the individual partners, is the "lessor" for purposes of the Sales and Use Tax Law.

This is consistent with the treatment of specific partnership property as property of the partnership rather than of the individual partners under Corporations Code section 15025(a)(c). That section provides that specific partnership property is not subject to attachment or execution except on a claim against the partnership. See also Sherwood v. Jackson (1932) 121 Cal. App. 354, 8 P. 2d 943.

When title to property is transferred from the partnership to another partnership or to an individual, that new partnership or that individual becomes the "lessor". This new "lessor" must pay the tax on his purchase price, or have acquired the property from a "transferor" who paid the tax, or collect tax on rental receipts.

In the case of the construction equipment, it was purchased by the partnership entity of _____ and _____. When _____ died, that partnership dissolved by operation of law (Corporation Code section 15031). The property was then held by _____ as an individual and _____ as an individual, and was thereafter contributed to a new partnership, a new entity consisting of these two individuals. The construction equipment became partnership property at that time (Corporations Code section 15008). The partnership was the "lessor" of the property thereafter. When _____ sold her interest to _____ their partnership ceased to exist, and _____ became the "lessor" of the equipment.

In order for _____ to thereafter lease the property without collecting tax on rental receipts, he would have to meet the terms of ruling 70(c)(2)(F). This he cannot do. The tax was paid by the partnership of _____ and _____ and not by _____ the individual.

Assuming, arguendo, that the partnership of _____ and _____ acquired the property from a "transferor", their partnership was not a "transferor" as to _____ the individual.

Obviously the partnership is not a decedent. Likewise the transfer of the property was not a transfer described in section 6006.5(b). That section reads:

"Any transfer of all or substantially all the property held or used by a person in the course of such activities when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For the purposes of this section, stockholders, bondholders, partners, or other persons holding an ownership interest in a corporation or other entity are regarded as having the 'real or ultimate ownership' of the property of such corporation or other entity."

The real or ultimate ownership is not substantially similar after the transfer since _____ formerly owned 50 percent and he now owns 100 percent. Not meeting the provisions of the code or ruling, all rental receipts subsequent to the transfer by _____ to _____ are subject to tax.

The same analysis is applicable to the 50 percent interest now held by _____ in the asphalt batch plant. The 50 percent was purchased tax paid by _____ and he has continually held that portion in his ownership. He is the lessor as to that half, and the rental receipts attributable to it are not subject to tax.

We are of the opinion that the deficiency was properly determined.

Done at Sacramento, California, this _____ day of _____ 1970.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

Attested by _____, Executive Secretary