

December 10, 1953

Gentlemen:

We have examined the audit of the above-named taxpayer for the period April 1, 1950 to March 12, 1953. It is our understanding that the only item in that audit to which you object is the inclusion in the measure of sales tax of the amount of \$86,226.00 representing the transfer of certain machinery and equipment by taxpayer to a new corporation in return for 12,318 shares of taxpayer's stock.

The transaction involved was pursuant to a written agreement dated February 17, 1953, executed by numerous parties. This agreement provided, in part:

1. _____ a partnership, would cause to be formed a corporation called _____ and would transfer to that corporation its electronics business, but would retain certain stock in and claims against _____ (a corporation).
2. All parties to the agreement except Corporation and _____ (an individual) would cause to be incorporated a new corporation called _____ Inc.
3. The parties organizing _____ were to transfer to that company certain stocks and cash for stock in _____ company. (For example: _____ (a partnership) transferred all of the shares of _____ (a corporation) and certain shares in and claims against _____; others contributed cash, shares of _____, or both, and others contributed shares of _____, cash, or both.)
4. Instruments was then to transfer 12,318 shares of _____ to that corporation in return for certain machinery and equipment. (This gave rise to the questioned transaction.)

December 10, 1953

5. Instruments was to acquire certain other assets of
for n stock or cash.

6. agreed to lease to cer-
tain real property consisting of land and building formerly hous-
ing activities.

It is our understanding that owned about
50% of the stock of prior to the time
of the consummation of the agreement by the transfers.

We think that the transaction whereby
, in return for its own stock, transferred certain
machinery and equipment to
is subject to sales tax. Our reasons are:

1. The transaction is a "sale" within the meaning of
Section 6006(a) of the Sales and Use Tax Law in that it is a
transfer of title of tangible personal property for a considera-
tion. The consideration is the stock valued
by the parties at \$7.00 per share.

2. This is not an "occasional sale" within the meaning of
Section 6006.5(b). You will note that there are two requirements
for an occasional sale under that section, first the sale must
be of all or substantially all of the property held or used in
an activity for which a seller's permit is required, and second,
after the transfer the real or ultimate ownership must be the
same as existed before the transfer. Both of these requirements
must be met if the transfer is to qualify as an "occasional sale".

As to the first requirement, we do not have sufficient
information to determine whether all or substantially all of the
property of that was held or used in
an activity for which a seller's permit was required was trans-
ferred to y. We do know that
retained some of its assets. Without further information, we
cannot say that this requirement is met.

As to the second requirement, in determining whether the
real or ultimate ownership of the property transferred is sub-
stantially unchanged we have consistently applied the 80% test
used in determining whether certain corporate reorganizations
are tax exempt under the Federal Internal Revenue Code. Since
owned 50% of the stock of prior
to the transfer and owned none of the stock of Instruments
company, it cannot be said that this requirement is met.

December 10, 1953

If you disagree with our conclusions in this matter, we will, of course, consider any further arguments you wish to present.

Very truly yours,

John H. Murray
Associate Tax Counsel

JHM:tj

cc: Pasadena - Auditing