

December 8, 1964

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 constituent corporation/s is not a statutory merger excep  
 transactions are corporate reorganizations within the n  
 the Revenue and Taxation Code, but are de facto merg  
 merger arise Title 1 Division 1,

Attention: ---

Gentlemen:

This is with reference to the question of sales tax liability on the transfer of assets held by \_\_\_\_\_, and the hearing held on the matter last September 4th in Long Beach.

We have reviewed the facts surrounding the transaction and the \_\_\_\_\_ listing application to New York Stock Exchange. We also contacted the Secretary of State regarding statutory compliance as far as corporate mergers are concerned and conclude as follows:

The transaction had the same result as that which would have been attained by a statutory merger. Therefore, it must be considered a de facto merger.

The board has held, pursuant to meeting with the Attorney General, that statutory mergers are not taxable transactions as far as sales tax liability is concerned. This is the extent to which the exemption applies, however.

In the \_\_\_\_\_ the practical effect of the transaction was a merger but it was not accomplished under the provisions of Title 1, Division 1, Part 8, Chapter 3 of the California Corporations Code. Reference is made, in particular, to § 4113.

Instead, the transaction was a transfer of assets by \_\_\_\_\_ for a consideration \_\_\_\_\_ (stock) which is a sale within the meaning of § 6006 of the Revenue and Taxation Code. Following the sale there was a dissolution of \_\_\_\_\_

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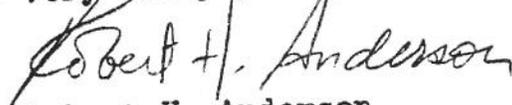
The result, of course, is a surviving corporation owning the entire assets of another corporation no longer in existence. This has the effect of a merger but is not a statutory merger.

Although it is not in issue, we were told that the acquisition of \_\_\_\_\_ Corporation assets by \_\_\_\_\_ done as a condition to the \_\_\_\_\_ transaction, was a statutory merger.

We are recommending that an adjustment be made but only in light of your contention that some of the assets determined to be subject to tax were, in fact, such things as realty, leasehold improvements, and the item that was built for resale, sold and never transferred to \_\_\_\_\_.

Mr. \_\_\_\_\_ was going to submit an accounting of items claimed to have been improvements to realty, etc. If this is not completed we presume it will be forthcoming. When completed it should be submitted to our district office as it will be a basis or starting point from which to make any adjustment in the measure of tax.

Very truly yours,



Robert H. Anderson  
Associate Tax Counsel

RHA:mm

cc: Long Beach - Subdistrict Administrator  
Attached are two copies of hearing officer's report dated 11-5-64, which has been approved. This hearing was held in Long Beach on 9-4-64.

Also attached are the audit working papers covering the period 7-1-60 to 8-28-63.

May 12, 1988

395.2100. Mergers and Statutory Mergers.

The Corporation Code reference in this annotation has changed.  
The last sentence of the annotation will be amended to read:

"An exempt statutory merger arises when  
provisions of Title 1, Division 1, Chapter 11,  
of the Corporations Code are followed."

12/8/64; 5/12/88

*D. J. Hennison*

DJH:rar