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STATE OF CALIFORNIA

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June 9, 1995

BURTON W. OLIVER  
*Executive Director*

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Re: Proposed Merger

Dear

This is in response to your letter to Gary Jugum dated April 19, 1995, in which you inquire about the sales and use tax implications of your client's proposed restructure and merger.

You describe the proposed transaction as follows:

"One of our clients (The Company) is considering restructuring part of its operations by merging two of its 'subsidiaries' (Sub A and Sub B, respectively). The Company and both Sub A and Sub B are domestic non-profit corporations organized pursuant to the California Nonprofit Public Benefit Corporations Code. The Company has control (via membership) of both subsidiaries but does not per se 'own' either entity since Subs A and B are not stock corporations. However the Articles of Incorporation (copies attached) for both subsidiaries state that upon dissolution all proceeds are to be distributed to The Company or charitable tax-exempt affiliate of The Company, controlled in a manner similar to the 'subsidiaries.'"

You also state that the proposed merger agreement provides that the merger will be in conformance with the California Corporations Code. You have concluded that this transaction is not subject to California sales and use tax because it constitutes both a statutory merger and a transfer of substantially all the assets with ownership substantially similar to that which existed prior to the transfer. Your letter requests affirmation of these conclusions.

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Subdivision (b) (3) of Regulation 1595 provides that sales tax does not apply to a transfer of tangible personal property of a constituent corporation to a surviving corporation pursuant to a statutory merger under sections 1100 through 1305 of the California Corporations Code or pursuant to similar laws of other states. You note that the sections cited in this provision relate to mergers between general corporations. Corporations Code sections 6010 through 6022 provide similar rules which are applicable to mergers between nonprofit public benefit corporations. You state that the effect of the merger provisions applicable to general corporations is the same as those applicable to nonprofit corporations. You ask whether a transfer of tangible personal property pursuant to a statutory merger under sections 6010 through 6022 is subject to sales tax.

The reason a transfer of property pursuant to a statutory merger under sections 1100 through 1305 is not subject to sales tax is that we regard the property to be transferred by operation of law. That is, we do not regard the transfer to be a "sale" within the meaning of Revenue and Taxation Code section 6006.

The relevant Corporations Code provision related to mergers under the general corporation law is subdivision (a) of section 1107, which states:

"(a) Upon merger pursuant to this chapter the separate existence of the disappearing corporations ceases and the surviving corporation shall succeed, without other transfer, to all the rights and property of each of the disappearing corporations and shall be subject to all the debts and liabilities of each in the same manner as if the surviving corporation had itself incurred them."

The relevant Corporations Code provision related to mergers under the nonprofit corporation law is subdivision (a) of section 6020, which states:

"(a) Upon merger pursuant to this chapter the separate existence of the disappearing corporations ceases and the surviving corporation shall succeed, without other transfer, to all the rights and property of each of the disappearing corporations and shall be subject to all the debts and liabilities of each and trust obligations upon the property of a disappearing corporation in the same manner as if the surviving corporation had itself incurred them."

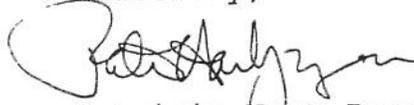
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As relevant to this discussion, these provisions are identical. We therefore conclude that a transfer of property pursuant to a merger under Corporations Code sections 6010 through 6022, as specified in subdivision (a) of section 6020, is a transfer of property by operation of law and is not a "sale" as defined in Revenue and Taxation Code section 6006. No sales tax applies to such a transfer. Since a merger is a transfer by operation of law, the occasional sale exemption is not relevant.

Revenue and Taxation Code section 6596 provides the only basis for relief from tax when a taxpayer reasonably relies on written advice from the board. The primary conditions to qualify are that the request for opinion must be in writing and must disclose all relevant facts, including the identity of the taxpayer. Since you have not identified your client, this opinion does not come within the provisions of section 6596.

If you have any further questions please feel free to contact us again.

Sincerely,



Patricia Hart Jorgensen  
Senior Staff Counsel

PHJ:cl

cc: