

August 12, 1964

"LM" and "LT"

This is in reference to the petitions for redetermination filed on behalf of "LM" and "LT" under date of June 10, 1964.

The facts may be stated briefly as follows:

An action for involuntary dissolution of both corporations was brought by a shareholder in the Superior Court of Orange County. On May 14, 1963, the court ordered that the corporations be wound up and dissolved. It was further ordered that the winding up and dissolution be subject to court supervision and that one "R" supervise and direct the winding up and dissolution. By a subsequent order dated July 3, 1963, the court on the petition of "R" approved the sale of the assets to "S".

It is contended in the petitions for redetermination that the stockholders of the corporations became the beneficial owners of the assets as of May 14, 1963, in accordance with the court order of that date, and that any subsequent dealings in the assets previously owned by the corporations were on behalf of the stockholders. From this it is argued that the transfer of assets should be treated as an occasional sale by the stockholders rather than as a taxable sale by the corporations.

We do not believe this conclusion is warranted, particularly in view of the provisions of Sections 4801 and 4802 of the Corporations Code. In the latter section, it is provided as follows:

"When involuntary proceedings for winding up or dissolution of a corporation have been commenced, the board of directors shall conduct the winding up of the affairs of the corporation, subject to the supervision of the court and the power to make orders, as in the case of voluntary winding up unless other persons are appointed by the court, on good cause shown, to conduct the winding up.

"The directors or such other persons shall have the same powers, duties, and general authority as the directors in case of voluntary winding up and dissolution, and, subject to any restrictions imposed by the court, may exercise all their powers through the executive officers without any order of court."

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See now  
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§§ 1805, 200

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Section 4801, in describing the powers and duties of directors after the commencement of voluntary proceedings, provides, in part, as follows:

"The powers and duties of the directors after commencement of such proceedings include, but are not limited to, the following acts in the name and on behalf of the corporation:

\* \* \*

"(g) To sell at public or private sale, exchange, convey, or otherwise dispose of, all or any part of the assets of the corporation, upon such terms and conditions and for such considerations as such board deems reasonable or expedient, and to execute bills of sale and deeds of conveyance in the name of the corporation." (Emphasis added.)

It appears from these provisions that "R", though appointed by the court, was acting on behalf of the corporations in negotiating the sale of assets to "S". This fact distinguishes the present situation from that involved in the letter ruling of December 28, 1953. Furthermore, in that instance, there was a distribution of assets to the sole shareholder, followed by a sale of those assets to a third party. In this instance, there was a sale of the assets to a third party, followed or to be followed by a distribution of cash proceeds to the shareholders after payment of debts.

In view of the foregoing, it will be our recommendation to the Board that the petitions be denied. You will receive notice of the action taken by the Board in due course.

Very truly yours,

Patricia McKinney  
Assistant Counsel

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