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STATE BOARD OF EQUALIZATION
OFFICE CORRESPONDENCE

Place: Sacramento
Date: March 8, 1960

To: San Bernardino - Auditing (BM)
From: Headquarters - Tax Counsel (JJD)
Re: Ruling 81 and Partnerships

Your letter of February 8 asked whether all transactions described in the next to last paragraph of Sales Tax General Bulletin 48-8 "are exempt even though the new partnership assumes liabilities of the old partnership."

It is our opinion that the assumption of liabilities by a transferee partnership amounts to consideration which would give rise to taxability. Only in those instances where a partnership is dissolved and individuals or entities make contributions to a new partnership solely in exchange for an ownership interest therein will the transaction qualify as exempt. We here, of course, presume that Section 6006.5(a) or (b) are not applicable.

Our understanding of the situations you pose involving the sale by the AB Partnership to the ABC Partnership is one in which C becomes a member in the new partnership by the contributions of certain assets, while A and B contribute assets which were formerly held by the AB Partnership. In addition, the ABC Partnership assumes \$10,000 worth of liabilities of the AB Partnership.

If, as stated in your letter, the transaction is executed directly between the AB and ABC Partnerships with the assets being sold before dissolution, a tax liability will arise depending on the consideration received by the transferor. Should the individual AB Partners attempt to claim that they are transferring certain assets as individuals following a dissolution, but at the same time maintain that the new partnership is assuming old partnership liabilities, the tax would also apply. In such a case we do not believe that a dissolution in fact has occurred, since said dissolution would necessarily require that partnership liabilities be paid and that the individual partners receive only amounts remaining after full payment of outstanding obligations.

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See notes 8104

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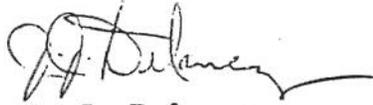
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State Board of Equalization

San Bernardino - Auditing (BM)

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Although we agree that the measure of tax in the AB - ABC transfer would be \$6,000, it does not appear that your expression of the formula is in accordance with the formula contained in the Chapter 10, Section 10.30 of the Audit Manual. The correct expression of the formula would seem to be \$10,000 over \$50,000 times \$30,000 equals \$6,000.



J. J. Delaney

JJD:rg

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San Bernardino