

**395.0000 OCCASIONAL SALES—SALE OF A BUSINESS—BUSINESS REORGANIZATION—  
Regulation 1595**

*Vehicles, vessels and aircraft, special provisions pertaining to, see Vehicles, Vessels, and Aircraft.*

**(a) IN GENERAL**

**395.0004 Acquisition of Assets—Joint Venture.** An opinion was requested as to the California sales and use tax implications on the acquisition of certain machinery and equipment for a proposed joint venture between A and B. The joint venture will be a corporation and will be owned 50% by both A and B. Orders for long lead-time machinery and equipment have been placed and will continue to be placed in the future. Some of this equipment will be purchased by A from U.S. vendors and some will be purchased by B from foreign vendors.

Since the transaction is neither a “sale” nor a “purchase,” the transfer of equipment by B to the joint venture corporation solely in exchange for capital stock would be a nontaxable transfer. That is, the sale to B is the retail sale. It is possible that B could have a California use tax liability with respect to the equipment in question. B would be regarded as having purchased the equipment for use in this state and as having used the equipment in this state if title to the equipment were to pass from B to the joint venture corporation in this state. For California use tax purposes, B would not be regarded as having resold the property in the regular course of its business, but as having disposed of the property in a transaction (the contribution transaction) which was not a sale. Thus, if the ownership transfer occurs in California, B will owe use tax measured by its purchase price of the property. If, however, ownership passes to the joint venture corporation outside this state, that is, if the transfer constituting the contribution occurs outside this state, then B will have no use tax liability because it would not have used or consumed the property in this state. 2/29/84.

**395.0005 Asset Sales.** Parent Corporation had two wholly owned subsidiaries, Newco and Lessor. Newco was an inactive corporation. Lessor’s only activities consisted of leasing to Parent tax paid machinery in substantially the same form as acquired. Since its only activity was the leasing of property in transactions that were not continuing sales, Lessor was not required to hold a seller’s permit.

Parent contributed the stock of Lessor to Newco and Lessor thereby became a wholly owned subsidiary of Newco. Lessor subsequently distributed the equipment it leased, which represented 100 percent of its tangible personal property, to Newco as a dividend in kind. The equipment was transferred subject to the ongoing leases to Parent. Parent thereafter sold its manufacturing business, where the leased equipment was used, to Purchaser. At the same time, Newco sold to Purchaser the equipment that had been leased to Parent.

Assuming the transfer from Lessor to Newco was a sale (e.g., if Newco assumed liabilities in the transfer), that sale would be an exempt occasional sale because Lessor did not use the property in a business requiring a seller’s permit and made no other sales in any 12-month period. Newco retained Lessor’s tax-paid status in the property under the last paragraph of subdivision (b)(1)(E) of Regulation 1660 because Lessor transferred all its tangible personal property and the ultimate ownership of the property was unchanged. Since Newco’s only activity was the lease of tax-paid property, it was not required to hold a seller’s permit. Therefore, since it made no other sales of property, its sale of the leased equipment also qualified as an exempt occasional sale. 11/90; 3/18/91.

**395.0007 Asset Sales.** An asset sale is structured such that the seller creates a new limited liability company (LLC) and transfers the assets into the commencing entity in exchange for an interest in the LLC that is concurrently transferred to the purchaser for cash. The sale is contingent on the finalization and concurrent closing of several transaction documents relating to various aspects of the business operations, e.g., a Supply Agreement, a Services Agreement, an Employee Benefits Agreement, etc.

The asset sale described consists of several contracts and agreements that relate to the same matter, are between the same parties, and are made as parts of substantially one transaction. This type of transaction is considered as a single integrated transaction for the transfer of tangible personal property in exchange for

cash. (See Civ. Code §§ 1436 and 1642.) It does not qualify as a non-taxable transfer to a commencing entity under Regulation 1595(b)(4) because the transfer is not solely for an interest in the commencing entity. 04/26/02.

**395.0009 Assets Used in Retail Business.** A taxpayer who was engaged in providing computer consulting services with sales of computer hardware and software was considered a retailer on two grounds:

(1) While the taxpayer made few sales of tangible personal property during the twelve month period immediately preceding its asset sales, it was not because the taxpayer was not in the business of selling items. It was because customers did not wish to buy hardware from taxpayer during that period. (Section 6019.)

(2) In one month the taxpayer made fourteen individual sales of hardware. This amount is considered to be a substantial number of sales. (Section 6015).

Therefore, the taxpayer's sale of assets to the successor is subject to tax. 5/22/92.

**395.0011 Assumption of Liabilities.** A corporation exchanges business assets for an assumption of liabilities. Included in the property transferred are "operating agreements" covering leases of realty and of equipment, contracts for construction, materials and supplies, contracts to render or receive services, contracts to sell or buy goods, proposals and bids, collective bargaining agreements, employee benefit plans and related agreements, and various governmental licenses and permits. None of the foregoing constitutes an assumption of liability for purposes of calculating tax liability if the liabilities relate to benefits accrued after the closing of the sale. If liabilities accrued under these agreements are related to benefits received prior to closing, the liabilities are included in the calculation.

Additionally, accrued liabilities for vacation plan accruals, pension plan, salaries, and royalties payable are includable for purposes of calculating tax liabilities. 1/8/87.

**395.0012 Business Activity Not Requiring a Permit.** A taxpayer is in the deburring business which involves polishing metal objects manufactured by various companies. This process is a nontaxable event because the manufacturer delivers the product to the taxpayer who deburrs the product and then returns it to the manufacturer for assembly and subsequent sale. The taxpayer holds a seller's permit to accommodate small companies who want to buy small quantities of materials of a kind used in the deburring process. The sales are taxable sales. Sales of these materials represents less than 1% of taxpayer gross receipts.

Based on the facts presented, the furniture and fixtures used in the deburring activity are not held or used in an activity requiring the holding of a seller's permit. Therefore, the sale of the furniture and fixtures is not subject to sales tax if they were used exclusively in the polishing activity and not also in the selling activity. 12/12/85.

**395.0013 Discontinuance of Business—Sales After.** A sale upon the exercise of an option after one year from the date of close out of the seller's business is an occasional sale unless this sale is one of three or more sales for substantial amounts in a twelve month period as set forth under Regulation 1595(a)(1). 9/18/69.

**395.0013.250 Excess Furniture and Equipment.** A new business in California that designs, manufactures, and sells satellite television integrated receivers and decoders purchased furniture and equipment tax paid for use in business operations. Due to unforeseen market changes and difficulty in obtaining highly skilled personnel, the business needs to reorganize and dispose of some of the excess furniture and equipment 60 days after the start of business. The business is of the opinion that the sale is exempt from tax as an occasional sale since the business operations consist of designing, manufacturing, and selling satellite television integrated receiver and decoder systems and not in selling furniture and equipment.

The sale of the excess furniture and equipment will not qualify as an occasional sale. Since the business operations include selling the merchandise they design and manufacture, the business would be required to hold a seller's permit. Since the furniture and equipment is used in the business operations that require the holding of a seller's permit, the sale would not qualify as an occasional sale. If the sale of the furniture and equipment is at retail, it is subject to sales tax. 11/12/97. (M99-1).

**395.0014 Lease Transactions.** Under general law, the term "transfer" relates to a transfer from one person to another and not to a transfer of some lesser interest, such as a bailment for hire. The "transfers" contained in Regulation 1595(b)(2) apply only to outright sales of property from one entity to another. Thus, a lease or rental of tangible personal property between entities of common ownership cannot qualify as an occasional sale under Regulation 1595(b)(2). 8/12/71.

**395.0015 Printing and Mailing Advertising Material Business.** Sales of advertising material and the service of mailing such material were inseparable activities of a single business. Even though the taxable sales were a small percentage of the total receipts of the business, the sale to the successor of the fixtures and equipment of the business was subject to tax. (Regulation 1595(a)(5)(B)(2).) 5/14/92.

**395.0020 Printing Press Acquired, Stored, and Resold by Printer.** A printing press purchased by a printing company at a bankruptcy sale and stored in a warehouse for resale for a period of four years may be subjected to the use tax upon the transfer of the press to a third party.

The printing company which claimed the exemption from tax for four years cannot claim the statute of limitations on the basis that the resale of a printing press is not within the scope of business of a printing company. 9/22/64.

**395.0040 Property Not Ordinarily Sold by Permittee.** A sale of property of a type not ordinarily sold by a permittee can be regarded as an exempt occasional sale under section 6006.5(a) only when it is made by him in an individual capacity and it is unrelated to his sales activity. 8/24/64; 2/24/98. (Am. M98-3).

**395.0060 Property Used in Retail Business.** Where a retailer engaged in the restaurant business sells equipment which, for income tax purposes, has been used one-half for business and one-half for personal purposes, the entire selling price is subject to sales tax. 9/23/54.

**395.0064 Sale of Assets.** When the Board has determined that a person is a section 6015 retailer, the salesmen, representatives, peddlers, or canvassers who are then regarded as "agents" of the section 6015 retailer are not required to hold sellers permits because of their sales.

If the only sales of tangible personal property by such an "agent" are sales of section 6015 property, a single sale of the "agent's" business assets is an occasional sale. 7/28/75.

**395.0066 Sale of Branch Thrift.** Corporation A is in the business of taking deposits and loaning money. It also acquired through assignments all rights, title, and interest to office and shop equipment lease contracts from various leasing companies. All of the items under lease were acquired tax paid at the time of the original lease. Some contracts were acquired by Corporation A at the time of the original lease, others were acquired some months later. These assignments were "sales" and were subject to tax at the time of assignment. Corporation A also sold checks to its depositors.

In December 1983, Corporation A sold an undivided 80% interest in these lease contracts to an out-of-state firm. A security interest was granted to the buyer in the remaining 20%. On the same date, it sold a branch office to a California firm. The assets transferred were the lease of the premises, certificate loans, all rights, title and interest in lease contracts similar to those sold to the out-of-state firm, leasehold improvements, and furniture and fixtures. In addition to the forgoing transaction, Corporation A entered into numerous automobile leases which were "sales."

The corporation's leasing and check sales activities are not activities separate from its loan and depository activities. The sale of the tangible personal property used in the operation of the branch office is subject to

tax. Also, the sale of the undivided interest in lease contracts was a sale subject to tax to the extent the leased property was located in California. 8/16/84.

**395.0068 Sale of Equipment Prior to Start of Operations.** A joint venture was formed to construct, own, and operate a dairy products processing plant. It purchased equipment tax paid for use in the processing plant under construction. Since the date of purchase, for financial and other reasons, the joint venture sold the processing equipment to a leasing company who leased this equipment back to the joint venture under a true lease. The sale to the leasing company occurred when the processing plant was still under construction. In this situation, the joint venture is a retailer and a seller of the plant equipment. The sale of the plant equipment is not an occasional sale. Rather, it is a sale in the regular course of the joint venture's business and requires the holding of a seller's permit. The joint venture is therefore entitled to a tax-paid purchases resold deduction. 8/4/88.

**395.0069 Sale by Franchisee.** A person obtained a franchise from the franchisees and thereafter transferred the franchise rights to a second franchisee with the consent of the franchiser. This transfer was a sale by the first franchisee. Upon obtaining the franchise, the second franchisee obtained a written agreement from the franchiser for the "usual ten year lease." This subsequent agreement released the first franchisee from his rights and duties to the franchiser.

A few years later, the second franchisee was unable to continue payments and returned the assets to the franchiser, with no consideration other than forgiveness of the franchisee's obligation to the franchiser. Although the second franchisee acquired the rights from the first franchisee, the agreement for the transfer to the second franchisee from the first franchisee replaced the original contract between the franchiser and the first franchisee.

The franchiser, therefore, stood in the place of the vendor of the franchise. The second franchisee's return of the franchise to the franchiser was not a sale. (See Regulation 1573(c).) 3/6/64.

**395.0070 Sale of Interest in an Estate.** Probate Code section 300 (since re-enacted as sections 7000 and 7001) provides that when a person dies, title to his/her property, both real and personal, passes to the person to whom it is devised or bequeathed subject to the possession of the executor.

The executor may, with approval of the probate court, sell the property. However, the chain of title passes from the decedent and not from the executor. Thus, when a sale of an "entire beneficial right, title and interest" in an estate is made, the seller is the person to whom title to the property was vested (the one who inherited property) on the death of decedent. The subsequent transfer of interest in the estate is the same as a sale by a taxpayer of the individual inherited items of property. As such, the sale of that portion of the estate which is personal property is subject to all of the provisions of the Sales and Use Tax Laws. 3/13/78.

**395.0071 Sale of Hotel Assets.** In addition to the fixtures and equipment of the restaurant and cocktail lounge, in-room refrigerators stocked with bottled water, individual size liquors, and soft drinks are subject to sales tax when a hotel is sold. The sale of the other in-room furnishings is not made taxable because of the presence of the refrigerator in the room. The sale of the other assets of the hotel may be taxable if they are one sale of a series of sales sufficient in number, scope, and character to require the holding of a permit. 8/30/91.

**395.0072 Sales of Stock Treated as Sales of Assets Under Revenue and Taxation Code Section 24518.** The purchaser of a corporation's capital stock elected to treat the transaction, for income tax purposes only, as a sale and purchase of the assets of the target corporation under section 24518 of the Revenue and Taxation Code. If there is no transfer of title in the assets of the target corporation to another separate entity or person when the election is made by the buyer of the stock under section 24518, the sale and purchase of the target corporation's stock will be treated for purposes of the sales and use tax law as a nontaxable transfer of stock rather than a sale of tangible personal property which is subject to tax. 1/28/85.

**395.0073 Sales Price of Machinery and Equipment.** A company sold its California division under an agreement that contained a breakdown of the selling price which included \$2,320,000 for machinery and

equipment. The purchaser hired an appraiser who determined that the appraised value of the machinery and equipment was \$2,137,500 which is \$182,500 less than the agreed selling price. The parties believe that the appraised value should control over the actual price stipulated as having been paid for the machinery and equipment.

The courts have held that the value fixed by agreement between seller and buyer of property exchanged as part of the purchase price, rather than the appraisal or market value, constitutes “gross receipts” upon which the tax is imposed (*Hawley v. Johnson* (1943) 58 Cal.App.2d 232). 12/13/71.

[395.0074](#) **Series of Separate Transactions.** Corporation A will enter into a stock sale agreement with a buyer who is interested in purchasing a division of Corporation A. To facilitate such sale, Corporation A will contribute the assets and property of the division to its newly formed subsidiary in exchange for the first issuance of the subsidiary stock. The subsidiary will not assume any liabilities of Corporation A and Corporation A will not receive any cash, notes, or other consideration for its transfer of assets to the Subsidiary. The buyer will then purchase the subsidiary stock from Corporation A.

The transaction is structured as a stock sale in order to preserve Corporation A’s rights to transfer its interest in various real property leases that it currently maintains with another party. Once the proposed transaction takes place, Corporation A will request the other party to execute a lessor’s estoppel certificate. Should the other party refuse, the transaction will nonetheless proceed as described above. The buyer then proposes to liquidate the subsidiary corporation and distribute its assets as a complete liquidation to the buyer.

Multiple transactions between several parties of this type require a two-tier analysis. First, each step in the series of transactions must be analyzed to ascertain that there is a taxable transaction between two parties. Second, the transaction must be collectively analyzed to determine if, under California Sales and Use Tax Law, the intervening steps of the transaction should be disregarded and the transactions should be analyzed only on a before and after basis, with all intervening steps of the transaction disregarded if they are undertaken for purposes of avoiding or altering the California sales and use tax liabilities of the parties.

In the first transaction, Corporation A’s transfer of assets from one of its divisions to a newly formed subsidiary solely in exchange for first issuance of the subsidiary stock will not constitute a taxable sale or purchase of tangible personal property since no consideration was involved in the transaction.

In the next transaction, no sales or use tax will be owed by Corporation A or the buyer upon the sale by Corporation A of the subsidiary stock to the buyer. Stock is not regarded as tangible personal property for purposes of the Sales and Use Tax Law.

When an entity distributes its assets as a complete liquidation ratably to the owners, the transfer will not be taxable unless consideration is received for the transfer, such as an assumption of indebtedness. Since the buyer will not assume the liabilities of the subsidiary upon liquidation and the subsidiary will not receive any other consideration, the liquidation is not taxable.

When there is no valid business purpose for structuring a series of transactions to achieve the ultimate transfer of property other than for avoidance of sales or use tax, the series of transactions will be disregarded and the transaction will be viewed as a taxable sale of tangible personal property from Corporation A to the buyer.

The transaction is structured as described so that the buyer will be permitted to benefit from several favorable leases of real property by the other party to Corporation A without the need to obtain the other party’s consent. Corporation A believes that its leases with the other party permits it to transfer property subject to these leases to a wholly owned subsidiary and then sell the stock of that subsidiary without obtaining the other party’s consent. However, the transaction will proceed as described whether or not the other party provides the buyer with a lessor’s estoppel certificate. That is, the alleged benefit sought by this structure is not significant. Rather, it appears that the reason for this structure is to avoid sales and use tax.

If such is the case, the transaction is regarded as structured in this manner to avoid sales tax and the transaction would be treated as a taxable sale from Corporation A to the buyer. 6/30/95.

**395.0074.175 Service Enterprises Making Retail Sales.** A firm was engaged in providing certain oil exploration services. In connection with such services, it pumped nitrogen gas into wells to force oil to the surface. The firm also held a seller's permit for the retail sale of nitrogen gas. The sales were incidental to the primary service activity.

The firm's primary business was the rendition of services. The sales of nitrogen were incidental and unrelated to the primary business, and did nothing to enhance the primary activity. While the sale of nitrogen storage tanks upon the sale of business are subject to tax, the sale of other assets is exempt as an occasional sale. 11/6/87.

**395.0075 Single Lease.** A taxpayer originally purchased equipment for use in manufacturing furniture in a foreign country. The equipment was purchased ex-tax. The taxpayer immigrated to California and brought the equipment with him/her. The taxpayer stored the equipment in this state for about a year while he/she looked for an opportunity to open another furniture manufacturing business. The taxpayer decided to minimize his/her income taxes by retaining ownership of the equipment and lease it rather than contributing it to a corporation. There were 22 pieces of equipment subject to the lease, which generated lease receipts of \$644,915 over a five year period.

A lessor exercises the privilege of selling tangible personal property over the period of months or years. A lessor must regularly collect the rent, take steps to maintain and insure the property and account for receipts and expenses. Even a single lease is therefore significant exercise of the selling privilege and justifies the tax. (Regulation 1595(a)(1).) 5/27/93.

**395.0077 Subsequent Adjustment to Sales Price of Fixed Assets.** An operator of a sawmill entered into a contract to sell its business operations. The main elements in the sale included the inventory of timber valued at \$30,000,000 and certain fixed assets referred to as "mill assets" valued at \$810,000. A section in the sales contract states, in part "buyer and seller acknowledge that the amount allocated to each asset category represents its fair market value determined pursuant to an arm's length negotiation." The contract states that the "mill assets" purchase price shall be adjusted on the date of the final payment on the "mill assets" payment note to account for the risk associated with the volatility in the White Fir lumber market based on the White Fir average market.

When the predetermined date for the adjustment arrived, the market value of the White Fir apparently dropped in value by over \$929,089. Pursuant to the agreement, the selling price of the "mill assets" was reduced to zero and the Assets Payment Note for purchase/sale of the assets was returned. Records of the purchaser apparently record the assets on the books with no purchase price. The taxpayer also has not claimed depreciation on filed income tax returns.

The taxpayer had reported tax on the \$810,000 selling price of the mill assets but, after the adjustment, has requested a refund of that tax. The seller and purchaser agreed to adjust the selling price of the mill assets even though the adjustment was directly related to the timber inventory. The subsequent agreement is without effect for sales and use tax purposes. It is evident that the price adjustment related to the timber inventory, not the mill assets. Therefore, the claim for refund should be denied. 12/16/96.

#### **395.0078 Summary of Rules on Occasional Sales.**

(1) Sales of vehicles, vessels, and aircraft are not exempt occasional sales under section 6367 of the Revenue and Taxation Code.

(2) The person making a sale cannot be a seller who holds or should hold a seller's permit with respect to the property being sold.

(3) If a business has an activity which requires a permit and a completely separate service activity, only the sale of the assets used in the activity requiring a permit is taxable.

(4) A person who makes 3 or more sales in a 12 month period is required to hold a seller's permit. This is interpreted as including three sales of \$100 or more or many sales of less than \$100. However, a person who is in the business of selling tangible personal property is subject to tax even though only one sale is made.

(5) The transfer of assets to a commencing corporation solely in exchange for first issue stock is not taxable. As long as the corporation has not actually issued stock or conducted business, it is a commencing entity.

(6) When an entity distributes its assets as a complete liquidation ratably to its owners in the stated percentage as their ownership interests, the transfer is not taxable unless there is some measurable consideration. The acquisition of stock for purposes of cancellation does not have a value for sales and use tax purposes.

(7) Even though a liquidation of assets may not be a taxable transfer, it may be a taxable use of the transferred property. For example, if the property is resale inventory, the withdrawal for other than resale is a use.

(8) Contributions to capital, statutory mergers, and sales of capital stock are not taxable. 3/13/95.

**395.0079 Transfer of Assets and Computer Programs.** A firm enters into an agreement to establish a business alliance. Among other items, it transfers a 60% undivided interest in all tangible personal property related to a specific portion of its business to the other member of the alliance. It also transfers a 60% undivided interest in all proprietary software which is used in the same portion of the business.

The software is transferred by electronic transmission. Approximately one year later, the firm transfers a mainframe computer which contains some of the software transferred earlier.

The transfer of assets contemplated by the alliance agreement is a retail sale. The agreement does not contemplate that the assets will be regarded as partnership assets. The transfer of the proprietary software by means of electronic transmission is not subject to tax as explained in Regulation 1502(f)(1)(D). The measure of any tax due on the subsequent transfer of the mainframe computer does not include any value attributable to proprietary software contained in related storage media to the extent the software was transferred electronically a year earlier. 10/29/93.

**395.0079.200 Transfer of Depreciable Assets to Subsidiary—No Consideration.** A Parent Company plans to transfer some depreciable assets (furniture, fixtures, machinery and equipment) to its wholly owned subsidiary. The Parent has paid sales tax reimbursement or use tax when purchasing this property. The Parent will receive no consideration from the subsidiary for the property. A transfer of tangible personal property for which no consideration is given for the property is not a sale or purchase. Therefore, no sales or use tax would apply to the transaction if no consideration, such as assumption of Parent's liability by the subsidiary, an intercompany debt, the cancellation of indebtedness, or Parent's receipt of additional shares in the subsidiary, is provided by the subsidiary in exchange for obtaining ownership in the property. 5/9/96.

**395.0080 Tax Sales by Municipalities.** In the absence of evidence to the contrary, tax sales by counties and cities are presumed to be occasional sales or sales for resale with respect to which liability for sales tax does not arise. 1/19/62.

**395.0081 Transfer Pursuant to Divorce Property Settlement.** A husband and wife each owned 50 percent of a corporation. The divorce property settlement provided that the husband purchase a vessel from the corporation at the current loan balance. He did so by having the purchase made by a corporation which he owned. In this case, community property was not transferred to the husband as his separate property.

One corporation sold a vessel to another corporation. This was not an involuntary transfer. It is, therefore, taxable. 11/22/93.

**395.0090 Gift of Business to Children.** A husband and wife partnership individually executed gift tax returns by which each made separate gifts of a portion of their business interest to two children. A new partnership, consisting of the parents and the two children, was then formed to conduct the business.

The transfer did not constitute a “sale.” In order for a sale to have occurred, the transfer of title must have been for legal consideration. To constitute good consideration in this case, there must have been a benefit conferred or agreed to be conferred upon the transferees or a detriment suffered or agreed to be suffered by the transferees, and the act, promise, or forbearance constituting the consideration must have been given in exchange for the offeror’s act or promise. Here, there was no benefit conferred or agreed to be conferred upon the transferees in exchange for the transfer. After the transfer, the transferors stood in precisely the same position with respect to liabilities as they did prior to the transfer.

While Corporation Code section 15017 provides that a partner admitted into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, the statute expressly provides “. . . that this liability shall be satisfied only out of partnership property.” Thus, when an incoming partner receives an ownership interest by way of gift and does not make an independent promise to pay the partnership liabilities from his other resources, there is no transfer for a consideration. There is merely a gift to a net capital interest. The transferee-donees did not expressly agree to become personally liable for the pre-existing obligations and such cannot be fairly implied from the receipt of the gift. 8/30/67.

**395.0093 Joint Ventures.** Three firms form three separate joint ventures with the following composition:

	<i>A</i>	<i>B</i>	<i>C</i>
Joint Venture #1	40%	35%	25%
Joint Venture #2	40%	35%	25%
Joint Venture #3	59%	39.5%	1.5%

Each joint venture is treated as a separate entity for sales tax purposes. Accordingly, sales of assets between joint ventures are subject to tax. Transfers of assets to an individual joint venturer by the joint venture prior to 80% completion of the joint venture project are subject to tax. A sale by a joint venturer of its interest in the joint venture to the other members is subject to tax measured by the tangible personal property transferred if the joint venturer is a retailer in its own right. 10/27/82.

**(b) ACTIVITIES REQUIRING PERMIT—PROPERTY HELD OR USED IN**

**395.0095 Activity Requiring Seller’s Permit—Sale of Assets.** Taxpayer processed wood furnished by its customer, a related company, into vinyl laminated wood products which the customer sold. While the wood was furnished by its customer, the taxpayer purchased wood filler, adhesives, stains, inks and sealers ex-tax which it incorporated into the wood products.

The sale of its equipment would qualify as an occasional sale under section 6006.5(a) if it was a sale of property not held or used by the taxpayer in the course of activities for which it was required to hold a seller’s permit.

Here, the taxpayer would not be required to hold a seller’s permit for the processing it does because a “sale” pursuant to section 6006 (b) is only applicable when the processing is for a consumer. However, the taxpayer also is selling the wood filler, adhesives, stains, inks and sealers which it incorporates into the wood. A seller’s permit is required for this activity. Accordingly, the sale of the business assets is not exempt as an occasional sale. 1/14/75.

**395.0100 Assumption of Contingent Liabilities.** A transferor, required to hold a California Seller’s Permit, transfers less than 80% of the tangible personal property held or used in the course of said

activities. Contingent liabilities, such as Deferred Taxes, Early Retirement Program and Warranty Liability, that have been accrued for financial statement purposes, were included in the transfer.

Since it is probable that future events will occur confirming the fact of the contingent liabilities, and the liabilities were accrued in accordance with generally accepted accounting principles, the transferee's assumption of the liabilities is consideration given for the assets that are transferred. 8/5/93.

395.0120 **Concessionaire.** The tangible personal property assets of a concessionaire are held or used in the course of an activity for which a seller's permit is required notwithstanding the fact that the retailer in control of the premises elects to report the gross receipts of the concessionaire on his own returns. 9/29/64.

[395.0130](#) **Disposition of a Business' Assets Acquired by Bequest.** A hospital which holds a seller's permit receives the business equipment of an unrelated type of business by bequest. The equipment is sold by the hospital on the same day the Decree of Distribution is issued by the Probate Court. The transfer of the equipment by the hospital is an exempt occasional sale. The equipment received under the bequest was not held by the hospital in the course of activities for which the holding of a seller's permit is required. Further, the hospital is not regularly engaged in the business of selling equipment. Accordingly, the sale of the equipment is a nontaxable occasional sale. 8/29/80.

395.0135 **Exempt Sales.** A corporation sold all of its assets. Prior to this sale, it had been engaged in making exempt sales of auto parts to the United States Government.

Although the sales to the United States Government had been exempt, the corporation had been required to hold a seller's permit as a result of its auto parts sales activity. There is no requirement that sales preceding the sale of assets must be taxable retail sales. Accordingly, tax applies to the sale of assets by the corporation. 4/12/94.

395.0140 **Food Containers—Sale of.** The sale of nonreturnable food containers is an activity requiring the holding of a seller's permit. Accordingly, the sale of the equipment used in producing these containers is not exempt as an occasional sale. 11/29/65.

[395.0150](#) **Furniture and Equipment Obtained through Foreclosure.** A financial institution, which is regarded as a retailer and holds a California seller's permit for selling and leasing equipment to its customers, obtained title to a hotel and restaurant through foreclosure. Along with the transfer of the real property, the taxpayer obtained title to the furniture, furnishing and equipment. It subsequently sold the furniture, furnishing and equipment along with the transfer of real property to a third party.

Since the taxpayer is already required to maintain a seller's permit for its equipment sales, sales tax applies to the taxpayer's sale of the furniture, furnishing and equipment to its customer.

In this case, the *Ontario Community Foundations, Inc. v. State Board of Equalization* (1984) 35 Cal.3d 811 does not apply. The taxpayer is not selling property from a business it owns that does not require it to hold a seller's permit. Instead, taxpayer acquired the property through foreclosure and thereafter sold this property to a customer as it would any other equipment it routinely purchased from a vendor and sold or leased to a customer. As such, the taxpayer's sale of the tangible personal property is not exempt as an occasional sale and is subject to sales tax. 5/26/95.

[395.0160](#) **Gasoline Service Station with Carwash.** A gasoline service station operated a car wash on the same premises. The charge for a car wash was reduced to persons who also purchased gasoline. The business was sold.

The sale of the tangible personal property related to the car wash was subject to tax. It was not an exempt occasional sale because the car wash was an integral part of the overall business activity. 7/28/75.

395.0200 **Insurance Company.** An insurance company operates a data processing center. The company owns the data processing equipment. The company performs certain data processing services for

independent companies. Some of the services are subject to use tax. The insurance company sells its data processing equipment to another firm which is neither an insurance company nor a bank. Although the insurance company cannot be required to hold a seller's permit, the purchase of the equipment is not exempt as an occasional sale under sections 6367 and 6006(a) of the Revenue and Taxation Code since the equipment was held and used by the insurance company in the course of an activity for which the company would have been, but for the provisions of California Constitution, Article XIII, section 14 4/5(f), required to hold such a permit. To interpret section 6006(a) in any other manner would be to defeat the statutory scheme of taxation sanctioned by the California courts in *Beneficial Standard Life Insurance Co. v. State Board of Equalization*, 199 Cal.App.2d 18. 6/3/69.

**395.0240 Laundry Equipment.** When a person operates two businesses at the same place, one a self-laundry and the other sales of laundry equipment, and the self-service business is sold including laundry equipment used therein, it is not an exempt occasional sale. 2/16/53.

**395.0255 Monetized and Nonmonetized Bullion Seller.** Since monetized and nonmonetized bullion is not a kind of property whose retail sale is always exempt, a person selling monetized and nonmonetized bullion is a seller under section 6014 and is required to hold a permit under section 6066. This is true whether or not the taxpayer ever actually makes sales subject to tax (i.e., sales of less than \$1,000). Since the taxpayer is required to hold a seller's permit, its sales of property used in the course of such activities does not qualify for the occasional sales exemption. Therefore, the sale of such property is subject to sales tax. 1/25/94.

**395.0260 Motel Operator.** A sale by a motel operator of his business, including personal property, is exempt as an occasional sale if the only prior sales by him were of items through a vending machine on which tax was reported by another party who had been authorized by the Board to report the tax as the retailer under section 6015. 12/13/77.

**395.0270 Occasional Sale—Seasonal Business.** A firm operates annually at a county fair. Several months after the close of the annual fair, it sells the fixtures and equipment which it used in its restaurant operation at the fair. The sale of the property is subject to sales tax. The fact that the sale took place during a period in which the retailer was not operating does not support a conclusion that the sale is exempt as an "occasional sale." 10/16/73.

**395.0275 Occasional Sale—Wholesaler of Prescription Drugs.** The sale of assets of a business who sells only prescription drugs, are not exempt from tax on the basis that the property sold is "of a kind" which is not taxable when sold at retail. Prescription drugs are not property "of a kind" always exempt from tax. The exemption depends in part on the condition of sale and not exclusively on the nature of the property. 1/11/91.

**395.0280 Optical Equipment and Fixtures.** An oculist or optometrist is the consumer of glasses and hence is not considered a retailer, and the sale of his equipment could be exempt as an "occasional sale."

However, should such equipment be used in the sale of sun glasses or other miscellaneous items in which instances the seller is a retailer, the sale of the equipment could not be considered as an exempt "occasional sale." 4/28/53.

**395.0300 Out-of-State Manufacturer.** An out-of-state manufacturer which had maintained an engineering laboratory on leased premises in California sold the laboratory equipment to retailers and consumers. It assigned the lease and sold water heaters, air-conditioning units, and gas heaters in place to the assignee. The sale to the assignee was not an occasional sale under section 6006.5, inasmuch as the out-of-state manufacturer was a seller under section 6014 and the property was held or used in an activity requiring a seller's permit. Furthermore, even if the property acquired by the assignee were not regarded as held or used in connection with selling activities attributable to the out-of-state plant, nevertheless the sale thereof was one of a series of retail sales of used equipment, sufficient in number, scope and character to constitute an activity requiring the holding of a seller's permit by the laboratory. 10/1/64.

[395.0360](#) **Processing—Fabricating.** The sale of equipment which has been used in binding new books for a consumer, even though all of the materials are furnished by the customer, is not exempt as an occasional sale, because equipment was used in an activity requiring holding of a seller's permit, the performing of taxable fabrication labor. 7/25/52.

395.0372 **Rented Equipment.** A corporation was engaged in the business of selling "metal specialties." Most of its sales were to the United States Government or sales in interstate commerce. It held a seller's permit. The corporation has no machine shop, does not fabricate prototype or parts, has no machinists, and has no equipment for doing metal work. It does test and verify what it has redesigned and, on occasion, it assembles a given part. Most of what it sold was produced by subcontractors.

The corporation contracted with a firm to do some manufacturing as a subcontractor. The subcontracting firm could not finance a lathe which was necessary to construct the part. The corporation purchased the lathe tax paid, rented it to the subcontractor, and depreciated the lathe for income tax purposes. In the course of events, the lathe later was sold to another firm.

The rental of the lathe was related to the business of the corporation and was "held or used by the seller in the course of an activity or activities for which a seller's permit was required." The lease of lathe was integrated with the corporation's principal business. As such, it was used in an activity which required holding a seller's permit. The sale of the lathe is not an occasional sale under section 6006.5(a). 1/6/87.

[395.0378](#) **Sale of a Service Division.** A corporation had two divisions. A service division that performed integrated testing services and whose manager owned 39.7% of the corporation stock, and a systems division that manufactured integrated circuit test equipment and whose manager also owned 39.7% of the corporation's stock. Both divisions were located in the same building and shared the same telephone number. However, they were physically separated from each other by a wall that divided the building. Each division had its own separate address and receiving/shipping docks. The divisions shared the same attorney and the same dental and medical plans and also a sales and accounting staff until about 1985 when each began to use its own personnel. The utilities were billed as one amount with the bill apportioned to each division based on square footage and power consumption. The service division made no sales of tangible personal property. Each division had its own engineering, operations, and technical staff, was operated by a different major shareholder, and had separate supervisory personnel. In July 1986, because of management differences between the managers, all of the assets and liabilities related to the service division plus a proportionate share of some other liabilities of the corporation were transferred to an inactive subsidiary corporation. The service division's manager relinquished his stock in the corporation in exchange for 79.4% of the stock in the subsidiary corporation. The 39.7% of stock in the corporation previously owned by the service division manager was transferred to the systems division manager so that he would hold 79.4% of the corporation's stock. The corporation believed that, if a sale took place, it was an exempt occasional sale.

It is apparent that common ownership was present. The divisions shared a dental and a medical plan and also shared one switchboard. At one time, the divisions shared a common sales staff and accounting staff, but these duties were separated at least a year prior to the sale so that each division had its own sales and accounting personnel. The corporation emphasized the separation of control over the two divisions, the conflict over management of the business, and the way the corporate affairs were conducted. The divisions shared a building but were divided by a wall so that each division had its own address and loading dock. The utilities were shared but the percentage of each entity's payment was based upon the power consumption and the square footage of the building occupied by each division. Although some names appeared on both customer lists, each division had its own customer list. While many activities were shared by the divisions, the actual operations of the businesses appear to have been kept separate.

It is concluded that even though the divisions shared common ownership and other services related to common ownership, the divisions were separate businesses which did not rely upon each other for day to day operations or for future customers. As the service division was not engaged in any activities which would have required it to obtain a seller's permit, it is concluded that the sale of the service division was an

exempt occasional sale pursuant to Regulation 1595(a)(3) as contrasted to a business which was operated together as described in Regulation 1595(a)(5)(B)(2). 10/26/90.

**395.0380 Sale of Time Shares in Staterooms of Cruise Ships.** Staterooms are sold as time interval units of one week duration which are designated as “Stateroom-Time Period Units.” The prices of the units vary with location and size of the stateroom and the time period of the unit. The time interval method of ownership affords the owner use of his own stateroom during a specific time. Purchasers receive full title interest in their units and a percentage of interest in all the “common area” of the ship.

The operation of the cruise ship is paid for out of the Cruise Ship Association’s income from owner assessments which are based upon forecasts of operating costs. Monthly dues similar to those of condominium time share owners are paid by stateroom timeshare owners. Amounts vary depending on the stateroom that is owned.

Based on this scenario, the owner of the cruise ship is selling to purchasers an ownership interest in the vessel. Each purchaser receives a certificate that serves as a title document and evidence of ownership. Thus, the taxpayer is making sales of tangible personal property sufficient in number, scope, and character to require that it hold a seller’s permit and report sales tax on its retail sales in this state. The measure of tax is the amount charged for the time period units. 7/31/81.

**395.0383 Seller’s Permit Required for Sales to Subsidiary.** A television broadcaster manufactures commercials for its customers. If a customer wishes to obtain a copy of the commercial, a subsidiary of the broadcaster makes and sells the copies. The broadcaster wishes to sell its assets. It inquired as to whether the asset sale would qualify as an exempt occasional sale.

If the broadcaster sells the commercials to the subsidiary, it is engaged in a business requiring the holding of a seller’s permit, and the sale of assets would not be regarded as an exempt occasional sale. If, however, the broadcaster transfers only possession of the commercials to the subsidiary for purposes of making copies, makes no charges to the subsidiary, and makes no other sales of tangible personal property, the assets sale would be an exempt occasional sale. The sales of duplicate tapes by the subsidiary are not attributed to the parent. 10/24/80.

**395.0388 Service Center Equipment.** A taxpayer operates a computer sales business at one location for which a seller’s permit is held. It also operates a service center in a separate city for which a seller’s permit is not held since this location provides warranty maintenance service for disk drives, a nontaxable activity. The service center is being discontinued and the equipment is being sold.

The service center was not entirely a separate endeavor from activities for which the taxpayer holds its seller’s permit since the activities conducted at the service center were the warranty maintenance service for disk drives sold by the taxpayer. Also, the taxpayer accounts for activities at the sales location and service center on a consolidated basis. Accordingly, the taxpayer held the assets on a unified business for which taxpayer was required to hold a seller’s permit. Thus, tax applies to the sale of the service center assets. 3/2/87.

**395.0395 Twice a Year Sales Activity.** A person “rents” a table twice a year at a local military show for the purpose of selling excess items from his collection to the public. That is, the person buys and sells military items. The person is engaged in the business of buying and selling tangible personal property (military items) and must hold a seller’s permit. Furthermore, it appears that the person is making three or more sales of sufficient number, scope and character during any 12-month period to be required to hold a seller’s permit even if he did not “rent” a table at the military show. 2/8/95.

**395.0420 United States, Selling to for Resale, Equipment Sale Taxable,** where equipment had been used in activity of making sales for resale to Federal instrumentality, as latter activity required holding of seller’s permit. 4/9/51.

(c) SERIES OF SALES—“NUMBER, SCOPE AND CHARACTER”

[395.0472](#) **Auction Sales—Determining Number of Sales.** An auction may be a sale of one item or a sale of a “lot” (a number of items) to a single bidder. In either case, the transaction would be regarded as a single sale for purposes of the Sales Tax Law. As is commonly the case, an auction may consist of a number of sales of tangible personal property. The general rule is that each time the hammer drops there has been a sale. This is true whether there are sales to several bidders or several sales to the same bidder. Accordingly, an auction sale by a public administrator of the assets of an estate would require the holding of a permit if there are more than two substantial sales per estate during a twelve month period. Thus, if two substantial sales were made, a seller’s permit is required even though only one or two auctions of the estate’s property are held during a twelve month period. 9/7/84.

395.0480 **Auctioneer’s Sales.** Sales made by an auctioneer on behalf of the owner of property are separately accounted for and tax paid by the auctioneer. Such sales should not be counted against the owner of property in determining the number of sales for qualification as “occasional sales.” 6/10/53.

395.0485 **Corporate Division Not Separate Entity.** When a seller sells the assets of a division which performs only services, all sales by all divisions must be considered in determining whether there is a series of sales which requires the seller to hold a seller’s permit. See *Chemed v. State Board of Equalization*, 192 Cal.App.3d 967. 12/31/82.

[395.0490](#) **Engaged in Business of Selling Horses.** A person who does not qualify as a retailer under section 6019 may nevertheless be considered a “seller” under section 6014 since selling horses is an ordinary and necessary part of breeding and racing horses, particularly in cases where income from sales exceed income derived from racing. When such a person engaged in the business of selling makes a retail sale, that sale is subject to sales tax regardless of how few sales the person makes. Accordingly, sales of horses at retail are taxable notwithstanding the fact that less than three sales occurred during a twelve month period. 12/20/90.

[395.0500](#) **Farm Equipment.** A cafe which owned and operated a farm is liable for tax based on the gross receipts from three separate sales of the farm equipment. Although the farming operations were a separate activity from the cafe, no food products of the farm being offered for sale through the cafe, the three sales of \$920, \$1,800, and \$33,600 made within a 12-month period were sufficient in number, scope, and character to require the holding of a seller’s permit and to disqualify them as exempt occasional sales. 9/10/64.

[395.0518](#) **Horse Breeding and Racing.** A taxpayer is in the business of breeding and racing horses. In the course of its business it makes incidental sales of horses to other persons engaged in the same business. It also makes sales of “culls,” i.e., horses found not to be suitable for the taxpayer’s purposes. The taxpayer is not regarded as being primarily in the business of selling horses. Nevertheless, if the taxpayer makes three or more sales within a twelve-month period, including sales in interstate commerce, tax will apply to the retail sales which are not otherwise exempt. 2/26/93.

395.0520 **Horses—Sales through Claiming Races of,** not counted in determining whether or not other sales by owner are “occasional,” in line with amendment to section 6015. 2/1/51.

395.0540 **Laundry Equipment and Supplies.** A seller with a permit and in business to sell laundry equipment and supplies is subject to tax on the sale of three laundries because selling laundries is considered equivalent to sales of laundry equipment and supplies. The attempt of the seller to sell one laundry personally, a second by escrow arrangements and a third in his name for a friend do not constitute exempt occasional sales. 11/16/64.

395.0560 **Market Fixtures.** The sale of market fixtures by a dairy supply and equipment company does not qualify for the occasional sale exemption when the sale was one in a series sufficient in number, scope and character to require a seller’s permit. Previously, the dairy had sold various items of equipment and had been engaged in buying and selling markets. Nor does the fact that the sale included meat and produce fixtures make the transaction an occasional sale because there was a series of sales. 8/31/64.

[395.0570](#) **Number of Sales.** A corporation operated a number of schools throughout the state. Each school held a separate permit for the sale of books and supplies. In determining the number of sales of assets for purposes of section 6019, all the schools must be considered as one single corporate entity. Counting the sales made by the corporation and not by the various schools is the appropriate method. Accordingly, a single sale by a given school is not exempt from sales tax if there were a sufficient number of sales by the corporation during a twelve month period to make the corporation a retailer under section 6019. 12/18/72.

395.0575 **Number, Scope and Character.** The fact that one sale of assets was great in dollar amount by comparison to other sales of assets would not, in and of itself, dictate the conclusion that it was an occasional sale. For example, if a person were to sell one horse, one mule and one jackass for \$500 each in three separate transactions in a twelve-month period, and within that same twelvemonth period sell 100 horses, mules and jackasses for \$500 each in one bulk transaction that grossed \$50,000, the single bulk sale would not be an occasional sale simply because it was large in dollar amount by comparison to the other three sales. Further, it is clear that the character of the sales would be sufficiently similar to preclude the large sale from being occasional. 1/17/75.

[395.0577](#) **Numerous Deliveries Under One Agreement.** Under a sales agreement where multiple transfers of items of tangible personal property are contemplated over a period of time, each transfer is counted as one sale for the purpose of determining the number of sales requiring the holding of a seller's permit under Regulation 1595. 9/20/84.

[395.0580](#) **Operating Equipment of a Transportation Business.** The transportation business does not in itself require a seller's permit. However, when a sale of operating equipment is one of a series of sales sufficient in number, scope, and character made within a 12-month period, to require the holding of a seller's permit, it is not an exempt occasional sale, and is subject to tax. 4/3/53.

395.0600 **Out-of-State as Determining Factor in Taxability of California Sales.** A person is a retailer as defined in the Sales and Use Tax Law, regardless of where sales are made if the sales are sufficiently numerous to constitute him a retailer had they been made in California. section 6015 defining retailer does not limit the sales made which constitute a person a retailer to sales made in California. Thus, a person who has the status as a retailer is subject to the tax with respect to any retail sales made in California not otherwise exempt. 10/21/52.

395.0620 **Permit—Sale Prior to Obtaining.** A sale is not an "exempt occasional sale" under section 6006(a) when such sale is one of a series of sales sufficient to constitute an activity requiring the holding of a seller's permit, notwithstanding the fact that one of the sales occurred prior to the date the seller applied for a seller's permit. 8/31/66.

395.0640 **Poles Sold to Utility.** The sale of poles and facilities to a public utility by a permittee who, over a period of years has made numerous sales of a diversified character, must be regarded as one of a series of sales sufficient in number, scope and character not exempt as an occasional sale. 6/2/53.

[395.0660](#) **Press,** sale of, used exclusively in printing an exempt newspaper, is nevertheless subject to tax where one of a series of sales sufficient to require holding a permit. 11/23/51.

[395.0670](#) **Resale Transactions.** Resale transactions are counted with retail transactions in determining whether a seller has made a series of sales of sufficient number, scope and character to require the holding of a seller's permit.

"Seller" means every person who sells tangible personal property of the kind which is taxable if sold at retail. This means that wholesalers are "sellers" and need a seller's permit even if they make no retail sales, unless they sell property like food products for human consumption, which are exempt when sold at retail. 6/24/91.

395.0673 **Sale of Assets.** A corporation, engaged in the business of selling computer hardware, computer software and computer services, made a close-out sale of its business assets. The corporation claimed that it had always been primarily engaged in the business of computer programming and that the hardware sales were initially intended only as a way to finance the acquisition of equipment for use in the programming business. Therefore, it believes that the computer hardware and software, used solely in the consulting or programming business, were assets not held or used in an activity requiring a seller's permit and the sale of these assets qualifies as an exempt occasional sale.

The corporation was engaged in the business of selling computer hardware and software and the final sale of assets was also computer hardware and software. The corporation had made a series of sales of computer hardware sufficient in number, scope and character to require the holding of a seller's permit. The close-out sale was merely another step in this series and does not qualify as an exempt occasional sale. Accordingly, the sale of the assets is taxable and it is not necessary to decide whether the company was primarily engaged in a separate consulting or programming activity. 6/6/91.

395.0673.250 **Sale of Assets by Medical Laboratory.** A medical laboratory located in California recently sold its assets to a medical center also located in California. The laboratory is in the business of analyzing medical samples and providing reports to its clients. It does not hold a seller's permit and has not made retail sales of tangible personal property during the 12 months preceding the sale of the assets to the medical center, with the exception of the following activities:

\$100—sale of laboratory equipment.

\$250—sale of human blood to another laboratory.

\$200—one sale of vehicle for on-road use subject to registration with the Department of Motor Vehicles.

\$262,042—The final sale of assets of business in one transaction to the medical center, including vehicles.

A person who makes three or more sales for substantial amounts in any period of 12 months is required to hold a seller's permit, as is a person who makes a substantial number of sales for relatively small amounts. Sales of vehicles required to be registered under the Vehicle Code are not counted in determining the number of sales for this purpose when the seller is not a person required to hold a permit by virtue of the number of its sales of vehicles. Thus, the laboratory's sale of the vehicle for \$200 is excluded from the calculation. In addition, sales of property of a type which would never be subject to sales tax (even at retail) are also not counted for these purposes. Sales of human blood fall within this category. (Revenue and Taxation Code section 33.) This means that, for purposes of determining whether the final sale of assets was one of a series of sales requiring the holding of a seller's permit, the laboratory made a total of two sales of tangible personal property. As such, the final sale was not one of a series of sales requiring the holding of a seller's permit. Therefore, the final sale of assets (other than its sale of vehicles included in that final sale) was an exempt sale under sections 6006.5(a) and 6367. 8/29/96.

395.0675 **Sales of Used Equipment Section 6019 Retailer.** In addition to fourteen separate sales of used computers, a firm had a sale of two computers and final sale of assets. Relying on *Hotel del Coronado v. State Board of Equalization* (1971) 15 Cal.App.3d 612, the fifteen sales in amounts averaging in excess of \$1,000 within one year are alone a series of sales sufficient in number, scope, and character to constitute an activity requiring the firm to hold a seller's permit. The sale of assets was also one of that series and does not qualify as an exempt occasional sale. 1/27/93.

395.0677 **Sale of Yacht Not Used in Business.** A taxpayer's original intent in applying for a seller's permit was to engage in the manufacture and sale of fiber glass boats. No boats were ever built and the venture was abandoned. The taxpayer then rented or leased the land and buildings it had acquired for the original venture and also acquired milling equipment which was the subject of two of its sales in June and July 1964. There was also a sale of a business asset reported as taxable in the fourth quarter of 1963.

The taxpayer listed three yachts on its books as marine inventory. Two were based out of state and one in California. One of the out-of-state based yachts was sold in August 1964. The California based yacht was sold in April 1965. All expenses incidental to operation, repairs, and licensing of the boats were charged on the taxpayer's books. Depreciation on the California yacht was computed and shown on the books. However, neither the expenses nor the depreciation were claimed on the federal income tax return which appears to support the belief that the California yacht was the taxpayer's personal property and was not being held as a business asset.

The taxpayer has made three substantial sales of tangible personal property within a 12-month period. When the fourth quarter 1963 business asset sale is combined with the two equipment sales in June and July 1964, there has been a series of sales sufficient in number, scope, and character to constitute an activity requiring the holding of a seller's permit.

While the sale of the California yacht may be an unusual sale in light of the prior sales (i.e., milling equipment), it cannot be isolated from the other various sales and treated as an occasional sale. The fact that the taxpayer carried the yacht on its books as a business asset (i.e., expenses of the yacht paid by the taxpayer and depreciation computed) is more compelling in determining its true nature and character than the taxpayer's statement that the yacht was his personal property because neither the expenses nor the depreciation were claimed on the federal income tax return. From this, it is concluded that the sale of the California based yacht was one of a series of sales sufficient in number, scope, and character to constitute an activity requiring the holding of a seller's permit. 2/2/67.

(Note: Subsequent statutory change re sales of vessels.)

395.0700 **Stockholder.** A sale by a stockholder of a corporation of fixtures and equipment owned by the stockholder, but used in the business of the corporation, may be an exempt occasional sale by the individual if the sale is not one of a series of sales made by him in his individual capacity. 1/20/65.

395.0710 **Television Stations.** The sale of one television station in California is considered one of a series of sales of television stations when four other television stations located out of state are sold to four different purchasers within a twelve month period. Thus, tax applies to the gross receipts from the sale of the fixtures and equipment of the California station even though each station is a separate operating division. 1/6/87.

395.0715 **Twice a Year Sales Activity.** A person "rents" a table twice a year at a local military show for the purpose of selling excess items from his collection to the public. That is, part of the person's "collection" activities is to make regular sales from his collection. The person is engaged in the business of selling and must hold a seller's permit. 2/8/95.

395.0720 **Unusual and Nonrecurring Type of Sales** made by person or firm making a variety of sales cannot normally be isolated from the other sales and treated as exempt occasional sales. 10/3/52.

#### (d) PART OWNERSHIP, SALE OF

[395.0760](#) **Co-owner.** Sale of tangible personal property by co-owner of his interest therein is taxable measured by the consideration received for his interest. 7/26/50.

[395.0800](#) **Partnership,** sale of one partner's share to another person regarded as an occasional sale if made by the individual partner and not by the partnership and if the individual had not otherwise made a series of taxable sales. 12/16/52.

[395.0810](#) **Partnership Reorganization.** A partnership agreement contains a provision of the type described in Corporation Code section 15031(7) providing for continued existence of the partnership upon withdrawal of a member. Thus, in a situation where a partner withdrew from the partnership, the vehicles owned by the former partners may be registered in the new name of the continuing partnership without

payment of tax. No change in ownership of the vehicles was occasioned by the withdrawal of the partner. The “person” who owns the vehicles, i.e., the copartnership, remains the same. 3/21/75.

**395.0820 Partnership—Sale of Interests.** A simultaneous transfer by all of the partners of their respective partnership interests for a consideration constitutes a sale within the meaning of section 6006(a). Although in form the partners are making transfers of their respective “interests” in the partnerships, the transfers are in fact transfers of specific partnerships property to a third person. 11/16/59.

**395.0821 Partnership—Sale of Interests.** A and B, sole shareholders of a corporation, sold all of the corporation stock to C, a limited partnership of D, E and F. Each of these partners granted A the option to purchase their individual partnership interests for a price equal to the fair market value. In August 1983, A offered to purchase E’s 26% in the partnership. In October 1983, D and F objected to the agreement, contending that they had a right of first refusal to purchase E’s partnership interest, and filed complaints in court alleging various breaches. In June 1984, A, D, and F entered into a settlement agreement which, among other things, terminated the litigation, and allowed A to purchase D’s 48% partnership interest and F’s 26% partnership interest by November 15, 1984. A concluded the purchase of D and F’s partnership interests on November 15, 1984, the same day A concluded the purchase of E’s partnership interest. The issue involves whether there was a transfer from C to A or whether there were multiple transfers from the individual partners of their respective partnership interests to A.

The November 15, 1984 transaction constituted sales by the partners of their respective partnership interests and qualify as exempt occasional sales since the partners as individuals were not required to hold seller’s permits. First of all, E’s sale to A was not simultaneous with those of D and F. In fact, A and E had attempted to consummate their transaction but were thwarted by the litigation. When A and E finally did complete their transaction, it was on vastly different terms than were D and F’s interests. The fact that E’s sale was transacted on the same day as D and F’s sales does not affect this conclusion. The sales were not simultaneous and were on different terms. The same day closings were a response to the litigation, not evidence of commonality of actions by the partners. 7/5/88.

**395.0828 Sale of an Airplane.** The members of a flying club own an airplane. One member resigns from the club and relinquishes his interest in the plane to the remaining members. If the resigning member owned an outright interest and received no consideration for his share, no sale would have occurred and no tax would be due. However, if the remaining members pay for the resigning member’s share or assume the resigning member’s share of indebtedness, a sale subject to use tax would occur. 6/30/81.

**395.0835 Transfer of Limited Partnership Interest.** Limited partnership interests are similar to shares of stock in a corporation. A limited partner has no interest in specific partnership property nor has the right to receive (partnership) property, other than money, unless otherwise specified in the partnership agreement. Accordingly, a transfer of a limited partnership interest in a limited partnership that owns a horse is a transfer of intangible personal property and is not subject to sales or use tax. 12/10/86. (Am. 2002–2).

**395.0840 Undivided Interest.** When A, an individual proprietor, sold an undivided one-half interest in his machinery and equipment to B for \$20,000 cash and, on the same day and pursuant to the same agreement, A and B transferred their interests to a newly formed corporation for two promissory notes of \$20,000 each and became equal owners of the capital stock, A is liable for tax on \$40,000. The second transfer is not an exempt occasional sale as defined in section 6006.5 because, under the circumstances, B was a mere conduit of title. 7/17/64.

#### (e) EXECUTORS AND ADMINISTRATORS, SALES BY

**395.0860 Auction Sales.** Where annual sales by auction are made on behalf of an estate of a deceased person, the auctioneer and not the estate is the retailer. A single sale by the estate was, therefore, an exempt occasional sale. 10/30/62.

395.0880 **Liquidation Sales** by executors and administrators, even though not connected with a business carried on by a testator during his lifetime, are not exempt as occasional sales, if sufficient in themselves to require the holding of a seller's permit. 10/24/52.

[395.0920](#) **Number of Sales.** Since an executor made three or more retail sales of tangible personal property of a substantial amount within a 12-month period, he came within the definition of a seller and was required to hold a seller's permit. Therefore the sales could not qualify as exempt occasional sales because each transaction was "one of a series sufficient in number, scope and character to constitute an activity requiring the holding of a seller's permit." 8/30/67.

395.0940 **Operation of Business.** When executrix operates business as seller in administering estate, subsequent sale of personalty used in business is taxable. 3/13/51.

[395.0960](#) **Public Administrators,** sales by, governed by same general rule as executors and administrators. Thus, tax is inapplicable if but one or two sales are made during administration of a particular estate, regardless of how many estates may be in the course of administration by a public administrator. If, however, the administrator makes three or more sales in substantial amounts during any twelve-month period during the administration of a particular estate the tax is due. 10/24/52.

[395.0980](#) **Trustee in Bankruptcy.** A transfer of the assets of a bankrupt corporation to a third party by a trustee in exchange for the assumption of the indebtedness related to the assets is an exempt occasional sale if the trustee has not made three or more sales within a twelve month period from the bankruptcy proceedings of the corporation. However, the transfer of any vehicles required to be registered with the Department of Motor Vehicles which are included in the transfer are subject to use tax. 5/30/90.

#### (f) SALE OF A BUSINESS GENERALLY

[395.1000](#) **Allocation of Receipts.** A contract for the sale of a business provided for a specific allocation of the selling price to the various assets of the business. An amendment to the contract ascribing a greater value to "good will," and a lesser value to the tangible personal property, was executed after title passed to the purchaser. Since there was no evidence that the revaluation of "good will" was more reasonable than the original valuation and no consideration was given for the revaluation, sales tax was applicable with respect to the tangible personal property according to the allocation in the contract prior to amendment. 12/23/65.

395.1040 **Allocation of Receipts.** In the sale of a business consisting of vending machines on location, the sales tax does not apply to that portion of the contract price which represents the intangible value of the location privileges. 3/10/59.

[395.1057](#) **Cable TV Company—Sale of Assets.** A cable TV company's only sales consist of selling eleven decoder boxes to individuals who own their own satellite dishes and do not receive cable services. In this situation, the cable TV system is regarded as a service enterprise. The taxpayer's sales of decoder boxes are separate from the service activity and are, in effect, a separate business. Accordingly, upon the sale of the assets, tax applies only to the sale of tangible personal property held or used in the activity of selling decoder boxes. (Regulations 1595(a)(5)(A)(1) and (a)(5)(B)(2).) 3/19/90.

[395.1058](#) **Cable TV System.** A cable TV business, which only made sales (leases) of hand held remote control units, is a service enterprise making incidental sales transactions. In the sale of such a business, tax applies only to the gross receipts from the sale of the tangible personal property used in the selling (leasing) activity. 4/9/90.

395.1060 **Discontinuance of Business—Sales after.** Individual sales of equipment at the time of discontinuance of a selling activity are subject to tax. However, if a sale of equipment which had one time been used in activity requiring a seller's permit is retained at the time the activity is terminated with no present intent of selling it, a later sale of that equipment is not subject to tax. 3/26/58.

**395.1080 Discontinuance of Business—Sales after.** When a business requiring the holding of a seller's permit is sold, the sale of the equipment used in the business is not an exempt occasional sale even though at the time of the sale the business had been discontinued. The sale is nevertheless, a sale of property held or used in the course of an activity for which a seller's permit is required. In any event, the last sale may be one of a series of sales, particularly if there were prior equipment sales. 8/28/57.

**395.1100 Discontinuance of Business—Sales after.** A sale is made of furniture and fixtures held or used in an activity requiring the holding of a seller's permit, upon the exercise of an option in a lease agreement, the exercise of the option occurring within a year after the date of sale of the business.

Assuming that the lease represents a true option agreement, and is not in lieu of a sale, a sale does not occur until the exercise of the option. If the agreement to sell was entered into by a retailer required to hold a seller's permit, however, the tax applies to the sale. 5/25/51.

**395.1115 Escrow Established Equipment Sales Price.** In a sale of a business, the escrow instructions signed by the seller and the buyer provided the following:

“It is mutually agreed by the vendee and the vendor that the consideration paid is \$9,000 for the license, \$15,000 for the fixtures and equipment and \$4,000 for the covenant not to compete.”

The sales price of the equipment in this transaction is \$15,000 as set forth in the escrow instructions even though this is higher than its book value and the successor, after operating the equipment for only one month, sold the equipment for \$6,500. 4/27/64.

**395.1120 Escrow Transactions—Time of Sale.** When intended purchasers of a business deposit a part of the purchase price in escrow, agree to pay the balance, take possession of the premises and begin active conduct of the business, a sale results under section 6006 because possession of the property is transferred, but the seller retains title as security for payment of the price. In such case, even if there is not a transfer of title because conditions precedent to closing of the escrow are not satisfied, there is nevertheless a sale by transfer of possession, pursuant to section 6006. 7/30/58.

**395.1140 Escrow Transactions—Time of Sale.** An escrow transaction involving the sale of an on-sale liquor business was cancelled and the operation and possession of the business was returned to the owners by the intended purchasers when their application of a transfer of the on-sale liquor license was denied. There was no sale. Since the escrow did not close, there was no transfer of title. The transfer of possession to the intended purchasers was not a transaction where title was retained to secure payment of the purchase price, nor was it a transfer of possession in lieu of a transfer of title. 4/14/58.

**395.1160 Escrow Transactions—Time of Sale.** Escrow agreement provided that title was not to pass to the purchaser until a specified sum had been deposited in escrow. At the time of the agreement, the purchaser made a nominal down-payment toward the purchase price and at the same time entered into possession under a separate oral rental agreement pursuant to which additional consideration was paid. When the intended purchaser failed to complete the escrow agreement, the owner regained possession and retained the nominal deposit as damages. No sale resulted. The transfer of possession to the intended purchasers should be regarded as a rental apart from the contract of sale and not a transfer of possession in lieu of a transfer of title. 4/14/58.

**395.1189 Intellectual Property.** Company A, which holds a seller's permit, is selling substantially all of its assets to Company B. Company A is a supplier of specialized information management software, related databases, and also provides services to certain industries. The seller does not own all of the computer storage media containing the intellectual property. The storage media is located in California as follows:

- (1) In two mainframe computers on loan from a third party as part of a joint development agreement.
- (2) On a leased VAX computer of which Company A owns 43 gigabytes of space and leases 25 gigabytes from the equipment lessor (A pays use tax on rentals payable).

- (3) Storage media on PC's owned by A.
- (4) On magnetic tapes stored in a facility as back up files and archived materials.
- (5) On Company A owned magnetic tapes and floppy disks held for resale.
- (6) Company A owned tapes and disks located at its facilities or at a third party manufacturer facilities which are used to duplicate tapes or disks for resale.
- (7) Company A also plans to lease another 44 gigabytes of disk space to be installed prior to sale.

The sales agreement provides that any tangible personal property containing software source code or other intellectual property will be transferred as follows:

The transfer is set forth in chronological order:

- (a) Company A will lease equipment containing 44 gigabytes of disk space for a term of three years (item 7 above).
- (b) It will lease a VAX 6000 computer for three months to make electronic transfers described below.
- (c) It will transfer all of the information contained in its owned VAX machine storage media to the newly leased 44 gigabytes of disk space.
- (d) It will assign its lease of the newly leased 44 gigabytes of storage media and the 25 gigabytes described in (2) above.
- (e) It will assign its contract with the third party described in (1) above to the buyer.
- (f) It will assign its lease of the computers described in (2) above to the buyer and also its newly leased VAX computer described in (b).
- (g) All of the information contained in the PC's described in (3) above will be transferred electronically by directly linking the storage media involved to the buyer's newly leased VAX computer.
- (h) After the buyer creates a back up of the information and verifies the system, Company A will erase the information contained in its VAX machine storage media and the storage media in the PC's.
- (i) Company A will transfer the blank storage media to the buyer.
- (j) The buyer will transmit information in its storage media to its PC's by linking them to its newly leased VAX 6000.
- (k) Until closing, the buyer will lease or loan Company A all of the equipment transferred and give Company A an exclusive license to use the intellectual property royalty-free.
- (l) Company A will destroy or erase all tapes and disks containing source code or database.
- (m) The buyer will produce and send new tapes or disks to third party instate manufacturers and instruct the manufacturers to erase or destroy the old tapes and disks.
- (n) Company A retains ownership of storage media described in (4) above not transferred that contains source code or database information.

(o) Title to all documents, manuals, diagrams, designs, schematics, test reports, drawings, printouts, will be transferred for a price of 130 percent of the cost of physical reproduction

(p) Following closing, the buyer is allowed to copy any information on Company A's storage media; and one year from closing, Company A will transfer all of its storage media with the purchase price being the value of the blank tapes or disks plus any transfer costs.

Sales or use tax does not apply to the electronic transfer of the intellectual property contained in Company A's PC storage media or the exclusive royalty-free license described in (k) above.

Sales tax will apply to all documentation described in (o) above at the price agreed upon.

Neither sales nor use tax applies from the assignment of lease or contracts involving Company A's leased storage media, the leased VAX computer hardware, or the third party mainframes (item 1 above), except the buyer assumes Company A's tax obligation on the leases on which tax is paid on rental receipts.

Tax applies to the transfer of the PC's, the blank Company A owned 43 gigabytes (See Item 2) and the blank or erased storage media based on fair market value as determined by the agreement.

Tax does not apply to post-closing copies made by the buyer from Company A's tax paid media, but tax does apply to the transfer of media described in (p) above.

No sales or use tax will be due from the lease of equipment by the Buyer to Company A pursuant to (k) except for any continuing obligation to pay use tax measured by rentals or the transfer. 6/4/93.

**395.1200 Manufacturer.** A manufacturing concern, all of whose prior sales were made for resale rather than consumption, incurs liability for sales tax upon the sale of its entire assets, measured by the selling price of that tangible personal property held or used in connection with its business activity and sold for use by the purchaser rather than for resale. 8/29/66.

**395.1220 Purchase and Simultaneous Sale.** Purchase and simultaneous sale of business is an occasional sale by purchaser if he is not otherwise engaged in a business requiring the holding of a seller's permit although the sale to the purchaser was taxable. The sale to the purchaser occurred at the close of escrow where the purchaser did not take physical possession of the property, although pursuant to the agreement of sale the first seller held the property for the purchaser between a specified date and the close of escrow. 9/30/64.

**395.1230 Research and Development Business.** A business which is developing a new computer product does not hold nor is it required to hold a seller's permit. The business sells its assets including work in progress. If the product development had been completed, the business would have engaged in selling it at retail. However, such completion is speculative depending on the success of the development program. Accordingly, the sale of the work in progress in a single transaction is exempt from sales and use tax as an occasional sale. 2/22/89.

**395.1240 Restaurant Equipment.** A restaurant owner turned over the business premises and equipment to a purchaser pursuant to an agreement of sale. The purchaser operated the business for a period of two years at the end of which period the owner executed a bill of sale to the purchaser for the equipment. Since the equipment was used in an activity requiring a seller's permit and was held for sale in due course from the date the owner relinquished possession to the purchaser until the date the bill of sale was executed, the transfer was not an occasional sale. 8/30/65.

**395.1243 Sale of Business.** An escrow instruction for the sale of a business provided that the total selling price was \$475,000 and that the buyer would reimburse the seller for sales tax on fixtures and equipment based on a valuation of \$20,000 or as required by the State Board of Equalization. The seller's books stated that the fixtures and equipment had a depreciated value at the time of the sale of \$80,027.

Sales tax is normally based upon the selling price of tangible personal property as agreed upon by the parties. No sales agreement has been submitted and the escrow instruction is ambiguous. The clause with respect to sales tax appears to be included primarily for the purpose of stating who is liable for the tax. If the buyer can show from his income tax records that he actually used the claimed \$20,000 price for income tax depreciation purposes, that value should be accepted. 2/8/80.

**395.1245 Sale of Furniture and Fixtures.** Company A entered into an agreement to sell its business, fixtures, and liquor license to Company B. Company B placed \$10,000 in escrow, took possession of the premises, and had the liquor license transferred to it pursuant to an agreement that company A would obtain the consent of the mortgagee of the equipment. Company B operated the business for one month but because of A's failure to obtain the consent of the mortgagee, B ceased operations and abandoned the premises. The liquor license was deposited with the Department of Alcoholic Beverage Control for transfer back to A.

The Board has taken the position that when intended purchasers deposit a part of the purchase price in escrow, agree to pay the balance, take possession of the premises, and begin active conduct of the business, a sale has taken place. In view of the above, in this case, a sale has taken place. The sale of the tangible personal property of the business is subject to tax. 9/10/65.

**395.1251 Sales of Drawings and Blueprints.** The sale of existing drawings and blueprints in connection with the sale of a business for which a seller's permit is held is subject to tax. If the agreement provides that the drawings and blueprints will be sold for 130% of reproduction cost, tax applies to the amounts as agreed to by the parties. 10/19/90.

**395.1251.500 Sales of Shutters to Related Entity.** A taxpayer manufactures, sells, and installs shutters in residences. The taxpayer sells both directly to residential customers and to independent home improvement-type stores. In each instance, the installation of the shutters is performed by the taxpayer. The taxpayer's sales to the stores are at a lower price than its direct sales to residential customers, and the taxpayer separately states installation charges to the stores. However, installation is included in the purchase price to the customer, whether the customer has contracted with a store or directly with the taxpayer. Taxpayer currently treats the shutters as fixtures and charges sales tax on the price at which it sells the shutters to the independent companies, exclusive of installation charges.

The taxpayer proposes to establish a new sales company (separate entity) which will be 95% owned by the taxpayer. The new company will purchase shutters from taxpayer and make sales of shutters to customers, but the installation will continue to be done by taxpayer at a fixed installation charge. The taxpayer will sell the shutters to the new company at a price similar to the price at which it sells to independent companies. In short, the new company will consummate the sales transaction with the customer, but the taxpayer will actually furnish the shutters and install them. The question raised is whether the measure of sales tax should be the price charged to the sales company for the shutters exclusive of installation charges.

The transfers between related parties (e.g., between a corporation and a majority-owned subsidiary corporation) are generally disregarded for sales and use tax purposes if they are not structured as if at arms length. However, if taxpayer and its related new entity conduct their transactions with each other as if at arms length, their transactions would be treated in the same manner as transactions between the taxpayer and the independent home improvement-type stores. The sale of shutters by taxpayer to the new company would be considered as arms length transactions if taxpayer's sales to the new company are made at the same or equivalent price as its sales to unrelated stores. If such is the situation, sales to the new company may be treated in the same manner as taxpayer's sales to independent stores for sales and use tax purposes. 6/3/97.

**395.1252 Sales Price of Fixtures and Equipment.** The buyer and seller signed an executory contract for the sale of the business. The agreed purchase price was placed in escrow and the buyer took possession of the business. Under these conditions, the sale of the business has occurred.

While the purchase price remained in escrow, the buyer filed a complaint in superior court seeking reformation of the contract and rescission, alleging that the equipment furnished was not suitable for use in the business and requesting that the court reduce the purchase price to reflect the true value of the business. It has been held that sales and use taxes are properly computed on the agreed upon sales price of tangible personal property and a subsequent “adjustment” of the sales price as part of a settlement of litigation does not entitle a taxpayer to a refund of any portion of the initially computed sales or use tax. 4/22/93.

[395.1253](#) **Service Business.** A taxpayer sold substantially all of its assets to a nonrelated entity. Prior to the sale of assets, the taxpayer operated a business which stored records, documents, and other boxed papers for its clients. The taxpayer made a monthly charge per box for storage. The taxpayer made limited sales of storage boxes to its clients and held a seller’s permit for this activity. Approximately 99 percent of its revenue was from its storage business.

The storage business itself was a service business. Its customers could rent a storage place without purchasing boxes and purchasers of boxes never receive a reduced storage rate. Under the specific facts in this case, the taxpayer operated a service enterprise and made separate and incidental sales as discussed in Regulation 1595(a)(5)(A). Accordingly, only the sale of assets used in conjunction with the sale of boxes is subject to tax. 11/9/93.

[395.1255](#) **Snack Bar with Laundromat.** A taxpayer applied for and received a seller’s permit to operate a snack bar with laundromat. The tangible personal property of this business has now been sold. It appears that this was one business, not two, located at the same address, without any physical barriers, and it was operated as a joint endeavor.

This operation was a retail establishment, which was run as a single business, and required a seller’s permit. The sale of the washers and dryers is subject to sales tax. 12/21/92.

[395.1256](#) **Stipulated Judgment for Rescission.** A purchaser of a business entered an action for rescission and restitution and for fraud and general damages based upon alleged misrepresentations as to the anticipated value of business. The seller of the business generally denied the allegations of the complaint and entered into a stipulation for judgment granting rescission to the purchaser, conditioned upon the delivery of title to the property within six months free and clear of liens and encumbrances and other performances. The purchaser was unable to clear all of the outstanding debts and obligations. The seller then undertook payment of the balances owed and resumed possession and operation of the business. The seller ultimately received a bill of sale for the fixtures and equipment.

In this situation, the parties conditionally stipulated judgment for rescission was not carried out according to its precise terms. Nevertheless, it is apparent that the other contracting party, the seller, waived the purchaser’s default and accepted return of the business with only a partial performance. In view of this, it was concluded there was not a second sale by reason of the return of the fixtures and equipment to the seller. A rescission and return of property to its original owner does not result in a second sale. 9/24/76.

**(g) “SUBSTANTIALLY ALL THE PROPERTY”—TRANSFER OF**

[395.1258](#) **Evidence of Consideration.** When intercompany debits and credits are recorded in the books (of account) in connection with the intercompany transfer of fixed assets, such book entries are sufficient evidence to support a finding that assets were transferred for consideration. Accordingly, the intercompany debits and credits represent the sales price of the property purchased and the (gross) receipts from the sale of the assets and are subject to tax. 4/28/93.

[395.1260](#) **Intangibles and Realty.** Sales of intangible personal property and real property not being covered by the taxing provisions of the Sales and Use Tax Law, should not be considered included within the meaning of “property” as used in section 6006.5(b). 11/12/58.

[395.1295](#) **Occasional Sale Followed by Statutory Merger.** A California corporation transferred all of its tangible personal property used in an activity requiring a seller’s permit, including other assets not so used

and some corporate liabilities, to a wholly owned subsidiary. Such a transfer would qualify as an exempt occasional sale, provided all of the assets used in the activity requiring a seller's permit were transferred, the real or ultimate ownership of the property remained substantially unchanged and the corporation had a valid business reason for structuring the transfer in this manner, other than the avoidance of the sales or use tax. In addition, the subsequent merger of the wholly owned subsidiary into an unrelated Delaware corporation would also not result in sales tax liability, provided the laws of Delaware regarding statutory mergers are similar to those in California. 9/24/93.

**395.1300 Out-of-State Property.** To come within the exemption in section 6006.5(b), relating to occasional sales, the owner must transfer not only all of the property in California used in the selling activity, but also all property wherever used in connection with the selling activity. 5/1/59.

**395.1313 Partnership Assets Transferred to Partners Then to Corporation.** A partnership, which is not required to hold a seller's permit, distributes all of its tangible personal property assets to two partners who each own the partnership equally. The partnership owns property divided into five categories. Categories 1 and 2 are real estate holdings. Category 3 is construction equipment and vehicles used by the partnership for business purposes, and includes an aircraft for which the partnership is indebted. Category 4 is office furniture and equipment used by the partnership for business purposes. Category 5 is property used by the individual partners for personal use or investment.

Each partner will receive an undivided one-half interest in Categories 3 and 4 of the partnership assets including the indebtedness on the aircraft. Immediately after these transfers, each partner will contribute his/her undivided one-half interest in the assets including the indebtedness on the aircraft to a corporation in which each partner owns 50 percent of the stock. Neither partner will receive additional stock or other equity in the corporation.

Assuming the partnership or the individual partners have not made any other sales of tangible personal property in a twelve month period, the transfer of the assets except for the vehicles and aircraft to the individual partners and the subsequent transfer to the corporation will be exempt from sales tax as an occasional sale under section 6006.5 (a).

Since Categories 1 and 2 are real estate holdings and Category 5 property is not used in the operations of the partnership's business, the Category 3 and 4 property transferred is all of the tangible personal property used by the partnership in the course of its business operations. Therefore, it appears that all or substantially all of the tangible personal property used by the partnership in the course of its business activity is being transferred to the individual partners. Therefore, the transfer of the vehicles and aircraft as well as the transfer of the other assets in Category 3 and 4 are exempt from sales or use tax since the ownership after the transfer to the individual partner remains the same. A similar analysis applies to the transfer by the individual partner of the vehicle and aircraft and the other assets in Category 3 and 4 to the corporation since the individual partners each own 50 percent of the stock of the corporation. 8/8/88.

**395.1320 Partnership Sale to Corporations.** Where, in one transaction, substantially all of the assets of a partnership are transferred to three corporations, a portion to each, it is an exempt occasional sale for the reason that each partner had an equal shareholding interest in each corporation. 2/1/57.

**395.1340 Partnership Sale to Corporations.** An equal partnership organizes two corporations, the stock in which is also owned equally by the partners. The sale by the partnership of automotive equipment to the corporations not constituting substantially all of the partnership's tangible assets, is not an occasional sale. The subsequent transfer in the following year of all of the remaining assets of the partnership to the corporation results in an exempt occasional sale. 7/23/53.

**395.1360 Partnership Sale to Corporations.** In order for a transaction to be exempt as an occasional sale under Revenue and Taxation Code section 6006.5(b), there are three necessary elements, each of which must be present. These are:

- (1) the transfer must be of all or substantially all of the property,

- (2) held or used in the course of an activity for which a seller's permit is required, and
- (3) after the transfer the real or ultimate ownership of the property involved must be substantially similar (80 percent rule) to that which existed before the transfer.

Where a partnership transfers to a corporation certain property at a branch plant, the first essential element is lacking, as the fact that it is a branch plant indicates that the property transferred is only a portion of the assets held by the partnership. 4/7/53.

**395.1380 Part of Property or Segment of Business Transferred.** Transfer of a part of the property or one segment of a business, such as the sales and distribution portion of a manufacturing business, to a corporation in return for stock therein, does not meet the requirements of an occasional sale under the law. 7/23/53.

**395.1381 Part of Property or Segment of Business Transferred.** The term "substantially all the property" as used in subdivision (b) of section 6006.5 of the Revenue and Taxation Code means all property, not just the property held in the course of a single activity which requires the holding of a seller's permit. Accordingly, a business which sells merchandise to two classes of clientele (such as wholesale customers and retail customers) is engaged in one activity. Even if one were to accept the argument that it constituted two activities, section 6006.5 requires the transfer of all or substantially all the assets used in all selling activities. 5/13/74.

**395.1400 Part of Property or Segment of Business Transferred.** The sale of equipment by a corporation to a stockholder for the stockholder's capital stock in the corporation is subject to tax.

The sale does not qualify as an occasional sale for the reason that the corporation is to continue in business and is only transferring a portion of its assets. Secondly, the ownership of the property transferred will be in one former stockholder who was not the major stockholder in the corporation. 1/7/53.

**395.1420 Part of Property or Segment of Business Transferred.** A corporation operating five separate stores created four new corporations and one branch was sold to each corporation. While the sole shareholders in the new corporations were also in control of the original corporation, the fact that all or substantially all of the assets were not transferred, but on the contrary the main office and store was retained by the seller, prevents the sales from qualifying as "occasional" sales. 12/9/53.

**395.1440 Part of Property or Segment of Business Transferred.** A corporation is owned equally by two parties. They agree to separate the operation of the business. To accomplish this purpose the corporation sells to one of the parties certain assets in return for all of the stock of the corporation owned by such party.

The transaction is clearly not an occasional sale within the requirements of section 6006.5(b). All or substantially all of the property of the corporation is not transferred, nor is the real or ultimate ownership of the property substantially similar to that which existed prior to the transfer. 3/16/53.

**395.1460 Permit Requirement—Meaning of "Activities."** The "activity" in section 6006.5(b) is the activity of selling, and is not limited to the selling activity carried on at individual locations for which permits have been issued under section 6067. The permit requirement in section 6067 is to facilitate administration and does not purport to affect the occasional sale exemption by enlarging it to apply when there is a sale of substantially all assets used in a selling activity at a particular place for which a permit was issued when the assets sold do not constitute substantially all assets used in **all** of the seller's activities requiring seller's permits. 3/16/59.

**395.1480 Permit Requirement—Meaning of "Activities."** The requirements of section 6006.5(b) are not met unless substantially all of the property, held or used in activities for which a permit would be required, is transferred. If a person engages in two separate and distinct selling businesses, the transfer of

all the assets used in only one business is not an occasional sale. The distinction between activities contemplated by section 6006.5 relates solely to the distinction between activities for which a seller's permit would be required and those activities for which a seller's permit would not be required. 9/27/66.

**395.1500 Real Property.** In determining whether all or substantially all of the property sold is held or used in connection with an activity for which a seller's permit is required, we do not take into consideration real property. Thus, where a partnership transferred to a new corporation all of its assets except building and land, and the ultimate owners of 90 percent of the corporation's property were the owners of all of the property prior to transfer, the requirements of section 6006.5(b) are met. 1/24/55.

**395.1520 Subsidiaries.** "A" corporation has two wholly-owned subsidiary corporations, "B" and "C." Principal business of all three corporations is the same and each holds a seller's permit. It is contemplated that "B" will be dissolved and all of its assets distributed to "A" in complete liquidation. These assets would be forthwith transferred by "A" to "C."

The transfer from "B" to "A" is exempt. The transfer from "A" to "C" would not be exempt as all of the assets of "A" are not involved. It is possible that the transfer from "A" to "C" is not a "sale," in that it could be considered a contribution to capital if "A" did not receive any consideration for the transfer. If "A" did receive any consideration for the transfer, the tax would apply on the portion thereof which covers the transfer of tangible personal property. 1/11/55.

**395.1524 Substantially Same Ownership.** Some divisions of Company A are engaged in selling activities requiring the holding of a seller's permit. The transfer of all the assets, including all the vehicles, of a nonselling division of Company A to an existing corporation wholly owned by Company A does not qualify for the section 6281 exemption. section 6281 requires that substantially all the assets held or used in the course of "business activities" be transferred in their entirety (substantially all of Company A assets, not just the assets of one division). 9/14/84.

**395.1525 Time Limitation for Transfer.** Corporation A operated two divisions. At its March 1, 1985 meeting, the Board of Directors approved a plan for reorganization. Under the plan, two new corporations would be created and the assets and liabilities of each of the two divisions would be transferred to the new corporations, B and C, in exchange for their stock. The result would be that A would be a holding company for two wholly owned subsidiaries. By June 1985, the creation of the new subsidiary C, the transfer of the assets and shares of stock, and the required filings appear to have been completed. A bill of sale transferring the assets was dated June 14, 1985. The creation of the new B subsidiary, the transfer of the assets and the shares of stock, the first meeting of the new Board, and the required filings were not completed until November 1985. The stock transfer was accomplished at the October 7, 1985 meeting of B's Board.

The requirement for a "... transfer of all or substantially all of the property ..." must be tested immediately after the transfer in order to qualify for the section 6006.5(b) exemption. Applying that standard to the transfer from A to C leads us to conclude that the section 6006.5(b) exemption does not apply to it. This conclusion necessarily assumes that less than 80% of A's assets were transferred on June 14, 1985.

Regarding the transfer from A to B on November 1, 1985, the section 6006.5(b) exemption would apply since all the remaining property of A was transferred and there is no dispute that the real or ultimate ownership following the transfer was substantially the same as it was before the transfer. 4/14/89.

**395.1527 Transfer of Assets to Parent Corporation.** In 1989, Corporation B declared a dividend of certain assets to its parent, Corporation C; in return, C assumed certain of B's liabilities. The assets transferred were (1) all contracts which could be assigned without the consent or approval of the other party (with certain exceptions); (2) all of B's right, title, and interest in any patents, trademarks, or any other proprietary rights in any technologies owned in whole or in part by B; (3) all tangible assets of Corporation B, including, without limitation, inventory, equipment, and accounts receivable, except such as may not be transferred without the consent of any third party.

The sales price (the assumed liabilities) is subject to sales tax with respect to the portion related to tangible personal property not sold for resale. This is true unless that sale is entitled to an exemption, such as the occasional sale exemption as defined in Revenue and Taxation Code section 6006.5(b).

The contracts that were transferred do not appear to be relevant unless tangible personal property related to these contracts were transferred along with the contracts. The transfer of the patents, trademarks, and other proprietary right in technologies are intangible and do not factor in the percentage of tangible personal property transferred. If the tangible personal property retained by B by virtue of the contracts it retained, and by virtue of it being unable to transfer without the consent of a third party, consisted of less than 20% of the tangible personal property B held in the course of activities requiring a seller's permit, then B's sale to C was an exempt occasional sale. 8/30/90.

**395.1530 Transfer of Assets to Related Corporation.** Corporation A transferred assets to a wholly owned subsidiary, Corporation B. Corporation A's directors had voted approval for the transfer as a contribution to Corporation B's capital, and both A and B recorded the transfer as an "investment". Corporation B immediately contributed the assets to Joint Venture C, in exchange for a 50% interest in C. Four days after obtaining the assets, Joint Venture C obtained a loan and distributed the cash back to Corporation B, pursuant to the joint venture agreement. On that same day, B issued a check in the same amount to Corporation A. Both A and B recorded the check amounts as a reduction in A's investment in B.

The payment from B to A is construed as consideration for the assets transferred, rather than a dividend. The original asset transfer from A to B was not an investment, a contribution to capital, or any other transaction devoid of consideration. The final result of this scheme was that A had cash and B had the assets. Therefore, the asset transfer was a sale subject to tax, measured by the price allocable to the noninventory tangible personal property. 9/16/91.

**395.1534 Transfer of a Vessel.** A taxpayer incorporated a wholly owned corporation in Oregon in 1977 for the purpose of a sale and transfer of title to a vessel to the corporation. On August 31, 1984, the corporation was dissolved. The representative stated that, at that time, the taxpayer retained the ship and assumed the liability on the mortgage. In December 1988, the taxpayer refinanced the original mortgage for the remaining balance due. Apparently, it was at that time the title to the vessel was officially transferred into the taxpayer's name from the corporation name.

Upon dissolution of the corporation in 1984, its sole shareholder, the taxpayer, became the owner of the vessel and assumed the liability owed with respect to the vessel. Thus, there was a transfer of title in exchange for consideration. This transfer did not qualify for the occasional sale exemption. The exemption discussed in Regulation 1595(c) applies when substantially all of the assets used by a person in a business activity is transferred. Here the taxpayer did not hold the assets in a business activity. The measure of tax is the amount owed to the mortgage on August 31, 1984. 7/7/92.

**395.1540 Yacht.** The sale by an individual of a ¼ interest in his personal yacht to a joint venture in which he participated as an individual was not an exempt sale even though the individual was the president and majority stockholder of the three corporations that made up the other parties to the joint venture, because the yacht did not comprise substantially all of the assets of a business activity, and after the transfer the real or ultimate ownership was not substantially similar to that which existed prior to the transfer. 8/24/67.

#### **(h) OWNERSHIP "SUBSTANTIALLY SIMILAR"—"REAL OR ULTIMATE" OWNERSHIP**

**395.1560 Bondholders.** "Bondholders," as used in section 6006.5 refers to holders of bonds that are an ownership interest in a corporation rather than a creditor's claim. For a security to qualify as a bond for sales tax purposes, it must be issued in serial form with interest coupons attached, be payable at a date certain, be registrable, be readily transferable, be convertible to stock if desired, and contain certain provisions for acceleration of payments in case of default. 12/23/59.

**395.1570 Commencing Corporation and Sale of Stock.** Corporation A transfers its manufacturing business together with the corporate name and logo to a new Corporation B solely in exchange for stock. Corporation A retains the distribution portion of the business and receives a license from Corporation B to use the company name and logo. Corporation A receives no other consideration other than first issue stock. After the transfer, Corporation A sells some or all of its stock in Corporation B to one or more buyers.

Assuming there is a valid business reason for structuring the transaction in this manner, and its purpose is not merely to avoid sales tax, the initial transfer of assets to Corporation B is nontaxable as contribution to a commencing corporation. The later sale of Corporation B's stock is not a sale of tangible personal property. 8/9/93.

**395.1575 Common and Preferred Stock—Similar Ownership.** Company X invested \$13 million in Company Y and received 1,500,000 shares of Preferred Series A and 500,000 shares of Preferred Series B stock. Other investors own 306,000 shares of common stock of Y with outstanding options to purchase 19,000 shares of common stock. Company Y will dissolve and all its assets will be transferred to X in exchange for debt owed to X. X will also pay the common stockholder of Y the payment which they have been guaranteed for their stock. X will then contribute assets of Company Y to a joint venture.

In determining if the ownership in a corporation will be substantially similar (80%) after the transfer of assets from Y to X, all persons holding an ownership interest in the corporation must be included in calculating the percentage of ownership interest in that corporation. (Regulation 1595(b)(2).) When all ownership interests are represented by one class of stock, it is easy to determine whether the 80% rule is satisfied. However, when there are two or more types of ownership interests, calculating the percentage of ownership interest must be computed on the relative values of such ownership. Since the value of the respective stocks was not provided, a definitive answer to the question cannot be made. In some cases, it may be necessary to have an audit to determine the relative value of the two types of stock. Ownership will be substantially similar only if the transferee owns 80% of the total value of the corporation. 8/30/88.

**395.1578 Community Property.** A corporation is owned as community property by a husband and wife, although each hold 50 percent of the stock in his or her own name. On dissolution of the marriage, the husband and wife are each awarded 50 percent of the net assets in the corporation in the property settlement. The distribution of the corporate assets is exempt as a transfer in which the real or ultimate ownership is substantially unchanged. 7/28/94.

**395.1585 Contribution of Tax-Paid Rental Equipment.** A sole proprietorship is planning to contribute all of its assets, subject to existing liabilities and to lessees' rights, into an existing shell corporation for legal liability reasons. The existing corporation is 100 percent owned by the sole proprietor. The "off-road" construction equipment being transferred will continue to be leased to related entities. The equipment does not consist of vehicles required to be registered under the Vehicle Code. The sole proprietor does not hold a seller's permit because the equipment is leased in substantially the same form as acquired and sales tax reimbursement or use tax has been paid timely measured by the purchase price.

The transfer of the assets to the corporation qualifies as an occasional sale under Revenue and Taxation Code section 6006.5 since the property was not held or used by the taxpayer in activities for which the seller is or would have been required to hold a seller's permit and the property is not vehicles required to be registered under the vehicle code.

Since the corporation will acquire the equipment in a transfer of all of the assets held or used by the taxpayer in its leasing activities, the ownership is substantially the same after the transfer, and the transferor timely paid sales tax reimbursement or use tax on purchase price, tax does not apply to the subsequent lease of the equipment by the corporation. (Regulation 1660(b)(1)(E).) 4/15/94.

**395.1600 Husband and Wife Partnership—Death of Wife.** Where a husband and wife partnership operate a business up to date of death of wife who leaves her 50 percent interest to her children, and subsequently a corporation is formed, the sole stockholders being the surviving husband and all of said

children, the transfer of the assets to the corporation does not constitute a change in ownership under section 6006.5(b). 3/25/54.

[395.1620](#) **Limited Partnership.** Sales of assets from sole proprietorship to a limited partnership constitutes a change in the real or ultimate ownership of the business for purpose of applying the “occasional sale” rule, since the limited partner has substantial rights in the business. 8/7/63.

395.1624 **Loans as Equity.** A person holds both common stock and a note of a corporation. For purposes of determining whether a transfer of assets from the corporation to the person meets the substantial change in ownership requirement to qualify the transaction as an exempt occasional sale, only the stock ownership will be considered. The fact that the Internal Revenue Service may assert that a person advancing money to a corporation which is in dire financial need acquires an ownership interest does not convert a transaction cast as a loan to an equity purchase for Sales and Use Tax purposes. 4/17/75.

395.1640 **Percentage of Ownership.** For the ownership of property before and after a transfer to be “substantially similar,” as provided in section 6006.5(b) relating to occasional sales, the owners of the property after the transfer must have a percentage of ownership similar to their original interest. Thus, when majority shareholders in a small corporation exchange the corporate property for shares in a large corporation which held the remainder of the small corporation’s stock, their percentage of ownership is materially reduced and, accordingly, their ownership is not “substantially similar” before and after the transfer. 4/24/59.

[395.1650](#) **Real and Ultimate Ownership.** For purposes of determining whether a sale is an occasional sale, the real and ultimate ownership is not affected by changes only in rights to manage or to participate in profits and losses. Real and ultimate ownership of the property after a transfer is substantially similar to that prior to the transfer if after the transfer ownership rights in the event of liquidation of the business are substantially similar to those prior to the transfer. 2/26/75.

395.1660 **Sale of Part and Lease of Remainder.** A transaction whereby the sole proprietor of a company sold 43 percent of the company’s tangible personal property to a commencing corporation in which he was the sole stockholder, and leased the remaining property to the corporation, does not qualify as an exempt occasional sale under section 6006.5(b). The phrase “transfer of property” in section 6006.5(b) means the transfer of beneficial ownership in the property, rather than just the transfer of legal title. Since, under a true lease of tangible personal property the lessor retains beneficial ownership of the property, a lease is not a “transfer of property” under section 6006.5(b). Thus, the transaction in question, with 43 percent of the property transferred to the corporation and 57 percent leased, is not an exempt occasional sale under section 6006.5(b). 4/24/67.

[395.1680](#) **Single Sale to Several Entities.** Where a taxpayer transfers substantially all of its assets in a single transaction to several entities with the result that its real or ultimate ownership of the property in one or more of the transferee entities is changed more than 20 percent, the transaction is not exempt as an occasional sale pursuant to section 6006.5(b). For such a transaction to be exempt thereunder, the taxpayer’s ownership of the property in each of the transferee entities must not be changed more than 20 percent. 3/18/69.

[395.1700](#) **Single Sale to Several Entities.** A sale by a corporation would be exempt as an occasional sale under section 6006.5(b) where substantially all of its working assets are transferred in a single transaction to three separate affiliated corporations having substantially the same ownership as the transferor. 5/17/62.

[395.1720](#) **Single Sale to Several Entities.** Where in one transaction, substantially all the property of an individual’s business is transferred to two corporations, a portion to each, it is an exempt occasional sale as the individual involved was the sole shareholder of both corporations. 2/18/57.

[395.1740](#) **Single Sale to Several Entities.** When substantially all the assets of a corporation held or used in an activity requiring a seller’s permit are transferred simultaneously to two or more subsidiary

corporations, each of which are wholly owned by the transferor, or the transferor owns at least 80 percent of the stock in each of the subsidiaries, the transaction qualifies as an exempt occasional sale. 5/12/66.

**395.1760 Single Sale to Several Entities.** Where a sole proprietor sells a one-fifth interest in his business to each of four parties, payable partly in cash and partly in notes, a taxable sale results within the meaning of section 6006.5 6/22/53.

**395.1768 Transfer Between Related Entities.** A and B together with Corporation C each own one-third of a Limited Liability company (LLC). The same three own a one-third interest in another Company D except that A and B own their interests through a different corporation (Holding). Company D will form a wholly-owned subsidiary (NEWCO). NEWCO will purchase all of the assets of the LLC.

In the final analysis, A, B and C hold a one-third interest in the LLC and each will hold a one-third interest in NEWCO. Since the tracing of ownership through multiple levels of ownership [e.g., the “grandparent” of the sellers and the “great grandparent” (Holding) of the purchaser] leads to the same person, for purposes of the occasional sale definition in section 6006.5(b) the ownership will be the same before and after the transfer even though a tracing only through the “grandparent” reveals no common ownership. 4/17/97.

**395.1770 Transfer of Assets to Limited Liability Company.** The sale of all of the assets of a corporation to a Limited Liability Company which will be owned by the same persons who owned the corporation in the same proportional ownership is exempt pursuant to section 6006.5(b). 12/21/95.

**395.1780 Unsecured Creditor.** A purchasing corporation which was an unsecured creditor of the selling corporation is not regarded as “a person holding an interest in the (selling) corporation,” and tax is properly applicable to the sale of tangible personal property by the selling corporation. 9/5/52.

**395.1783 Vessel Distributed to Individual Partners and Then Transferred to a Corporation.** A partnership rents a houseboat, its only asset, and pays use tax on the rental receipts. The houseboat is distributed to the individual partners, each receiving their same prorata share as their partnership interest. This distribution is a transfer of all property without a change in ultimate ownership since each partner will own the same percentage of ownership in the houseboat after the transfer as that partner owned in the partnership. Thus, this distribution is a transfer of all property without a change in ownership as set forth under Regulation 1595 and exempt from tax under section 6281.

Upon the transfer of the houseboat by the individual partners to the corporation, if the individual partners receive no consideration other than the first issue of stock of that corporation, there would be no sales or use tax applicable to the transfer under Regulation 1595. If however, there is some consideration received by the partners such as an assumption of the corporation’s liabilities, then that consideration will form the measure of tax unless the transfer qualifies for the exemption under section 6281.

Assuming the transfer to the corporation is part of a transfer of at least 80% of the tangible personal property held or used by each of the individual partners in the course of their business activities and assuming that the stock they receive in the corporation is proportionate to the ownership interest each held in the houseboat, the transfer would qualify for the exemption under section 6281. 11/18/88.

#### (i) TRANSFERS AND CONTRIBUTIONS TO NEW CORPORATION OR PARTNERSHIP

**395.1795 Assets Not Transferred Simultaneously.** The transfer of assets by a bankrupt company to a commencing corporation in exchange for the shares of the commencing corporation will not be regarded as taxable consideration under the following conditions, even though some of the assets will not be transferred simultaneously with the issuance of the stock:

(1) The transfers of the assets are part of a single integrated bankruptcy plan of reorganization in which the commencing shares and other items are being exchanged for all of the transferred assets.

(2) The plan has been approved by the bankruptcy court.

(3) The time between transfers will be short, only a few weeks.

If the above conditions are met, the transfers of assets will be regarded as transfers to a commencing corporation partly in exchange for the first issue stock of a commencing corporation. (Regulation 1595(b)(4).) That is, the stock will not be regarded as taxable consideration for the transfer of assets. Tax does apply, however, to any consideration given for the transfer, including assumptions of indebtedness and warrants received by the transferor. 7/15/93.

[395.1796](#) **Assumption of Loan Obligation.** Two individuals who were members of a partnership purchased an airplane which they owned equally in their own capacities. They paid part cash and the balance of the purchase price was a loan obtained in their individual capacities. After using the airplane for about a year, the owners transferred the ownership of the airplane to a new corporation. The loan on the airplane was not transferred to the corporation. It remained in the names of the individuals. However, the payments on the loan were made by the corporation.

Even though the loan obligation on the airplane was not formally transferred to the corporation, the corporation nevertheless assumed the loan obligation by making the monthly payments on the loan. This constitutes consideration for the transfer of the title to the airplane and, thus, the amount of the loan obligation assumed is the measure of the tax due. 6/23/89.

[395.1800](#) **Commencing Corporation.** A transfer of assets directly to a commencing corporation formed for such transaction, solely in exchange for all of the stock of such new corporation is not subject to tax. 1/7/53.

395.1820 **Commencing Corporation.** Transfers of less than 80 percent of total assets will qualify as exempt if the transfers are to a commencing corporation solely in exchange for stock ownership in that corporation. If, in addition to stock, there is consideration received from the corporation, such as notes, cash, or assumption of liabilities, then, to this extent, taxable gross receipts have been received. 12/17/57.

[395.1840](#) **Commencing Corporation.** The sale of partnership assets to a commencing corporation for stock is an exempt occasional sale provided the requirements of section 6006.5(b) are met even though it is contemplated there will be a sale of stock for cash which will substantially change the ultimate ownership where the Corporations Commissioner requires the sale to the partners to take place prior to any sale of stock for cash. Such procedure is not done to avoid sales tax, and does not constitute a step transaction. The requirements of the Corporations Commissioner constitute a good business reason in this instance. 3/1/66; 7/28/86.

[395.1841](#) **Commencing Corporation.** A corporation may be considered a “commencing corporation” within the meaning of Regulation 1595(b)(4) even though shares of the corporation are not immediately issued upon its formation. Where there is a delay in the issuance of such stock, a facts and circumstance test will be applied to determine whether a corporation is regarded as a “commencing corporation” when it issues stock in exchange for property. 7/15/93.

395.1860 **Commencing Corporation.** Machinery and equipment transferred by taxpayer to corporation formed by taxpayer, solely as capital contribution for which taxpayer received stock, is not taxable sale. 7/31/50.

[395.1880](#) **Commencing Corporation. Assumption of Liabilities Measurable Consideration.** Transfer of a corporation’s assets to a newly-formed corporation in consideration for the new corporation’s stock and the assumption by the new corporation of the parent corporation’s liabilities was subject to sales tax because the parent corporation’s property transferred to the new corporation was not substantially all the property owned by the parent and because the consideration in the form of liabilities assumed by the new corporation was measurable. 6/5/70.

**395.1881 Commencing Corporation—Assumption of Liabilities Measurable Consideration.**

Liabilities such as pension funds, tax withholdings, real estate mortgage, and capitalized leases which are not directly related to tangible personal property transferred are considered part of the assumed liabilities in calculating the measure of tax on the sale within Regulation 1595(b)(4). However, if the liabilities are those that will be incurred after the sale for benefits that will be received after the sale (contingent liabilities), those amounts are not assumed liabilities and would not be used in calculating the measure of tax. 11/15/90.

**395.1885 Commencing Corporation—Definition.** A corporation is a commencing corporation within the meaning of Regulation 1595 if it has not previously issued any stock. The mere recordation of its corporate existence with the Secretary of State and the Franchise Tax Board does not in and of itself disqualify the corporation as a commencing corporation for purposes of Regulation 1595. 11/29/89. (Am. 2000–2).

**395.1892 Commencing Corporation and Subsequent Sale of Stock.** A proposed transfer of all of the assets and none of the indebtedness of a manufacturing business to a newly-created subsidiary solely in exchange for stock, followed by the sale of such stock will not be a taxable transaction for purposes of the California Sales and Use Tax law.

The transfer is exempt because it meets the requirements of section 6006.5(b), transfer of all assets to a newly-created entity when after the transfer, the ownership of the property is the same as existed before the transfer. In addition, transfers of property to a commencing corporation in exchange solely for the first issue of stock of the corporation are nontaxable under Regulation 1595(b)(3), except to the extent the transferor receives consideration such as cash, notes, or assumption of indebtedness. Each of the foregoing provisions apply to the proposed transfer of assets to the newly-created subsidiary.

Moreover, the transfer of the assets to the commencing corporation followed by the sale of such stock is structured in this manner to maintain compliance with federal labor laws and other valid business purposes. 6/4/90.

**395.1893 Contributions.** Two separate entities, A and B, formed a joint venture to construct a pipeline distribution system; each having a one-half interest in the undertaking and each contributing one-half of the assets to the joint venture. At the outset, each party contributed cash in equal amounts. Later, entity A contributed equipment and entity B contributed cash in amounts equal to the value of the equipment. The parties retained their 50–50 or equal interest in the joint venture.

In the above transfer, there is no sales tax liability upon the transfer of property to a joint venture or partnership by way of contribution to the capital of the venture or partnership. Thus, where entity A contributed equipment to the joint venture's capital account and received nothing in return from the joint venture in the way of cash or other consideration; there would not be a sale of the asset. In this instance the other joint venturer contributed assets equal in value to those contributed by entity A in order that their respective interests remained the same. The fact that all of the assets were not contributed simultaneously is not controlling and does not result in a sale. The application of tax turns on whether the joint venture paid anything in the form of consideration (cash, assumption of liabilities or other property valued in money or moneys worth) to the transfer. 9/17/73.

**395.1897 Incorporation of Partnership.** A 50/50 partnership of A and B formed a corporation and all assets and liabilities of the partnership were transferred to it. The corporation issued three classes of stock to the partnership: Class A Common Stock representing 50% of the capitalization of the corporation; Class B Common Stock representing 12½; and Preferred Stock representing 37½. The Articles of Incorporation stated that Class B Common Stock holders were entitled to elect only one member of the Board of Directors and that under certain conditions the Class B Common and Preferred Stock could be redeemed at the option of the corporation. Upon dissolution of the partnership, all of the Class A Common was distributed to B. This transaction meets section 6006.5(b) definition of occasional sale in spite of the conditions imposed on the Class B Common and Preferred Stock. All property of the partnership was

transferred to the corporation and after the transfer the ultimate ownership was substantially unchanged. 3/5/75.

**395.1900 Incorporation of Sole Proprietorship.** The transfer of a sole proprietorship's assets and liabilities in return for all the capital stock of a commencing corporation was not taxable because the transaction was an occasional sale under section 6006.5(a), if the assets sold were not held or used by the sole proprietor in the course of an activity for which a seller's permit was required and if the sale was not one of a series sufficient in number, scope, and character to constitute an activity for which a seller's permit was required, or under section 6006.5(b) if the assets sold were held or used by the sole proprietor in the course of an activity for which a seller's permit was required, because all the assets were transferred and because the ownership of the assets remained the same as that which existed before the transfer. 10/8/69.

**395.1920 Incorporation of Partnership.** When a corporation has been formed from a partnership and the original partners' ownership interest in the tangible personal property of the business has been diluted to a 25 percent interest from their former 100 percent ownership, the transfer is not exempt as an occasional sale under section 6006.5(b). Where the assets, including goodwill, were transferred to the corporation in exchange for corporate stock and the assumption of partnership liabilities by the corporation, the measure of the tax is limited to the partnership liabilities assumed by the corporation. 8/28/64.

**395.1924 Joint Venture.** Two parties participated in performing construction contracts. They were found not to have formed a joint venture because:

- (1) There was no formal joint venture agreement.
- (2) The parties did not share profits and losses.
- (3) The accounting entries were not consistent with the existence of a joint venture.
- (4) Only one of the two parties actually entered into a contract with the general contractor.
- (5) The participation of one of the parties was limited to providing materials.
- (6) One party was created to carry on a particular activity rather than for the purpose of engaging in a joint venture. 3/30/76.

**395.1940 "New" Partnership Agreement.** The execution of a "new" partnership agreement which merely modifies or reorders the relationship between the partners does not change an individual's transfer of his business assets to a preexisting partnership in which he is a partner from a taxable sale to an existing partnership into a nontaxable contribution to a commencing partnership. 8/6/69.

**395.1960 Partnership, Application of Tax to Formation of.** There is no sales tax liability upon the transfer of property to a joint venture or partnership by way of contribution to the capital of the venture or partnership. The tax does apply, however, to a sale of property to the partnership by a partner for cash or other consideration not representing an interest in the business, unless the transferor is not himself a "seller." 5/25/51.

**395.1964 Partnership—Contributions.** Corporation G and Corporation P form a partnership. P will contribute cash of \$990 and G will contribute \$10. P will then purchase from G a 1 percent interest in certain real estate. P and G will then contribute their combined interest in the real estate to the partnership. Thus, following these transactions, G will have a 99 percent interest in the partnership and P will have a 1 percent interest.

G will then contribute certain assets of a business holding a seller's permit to the partnership in exchange for an additional partnership interest. The partnership will assume certain liabilities of G. The assets contributed by G represent 80 percent of the tangible personal property of the business.

After the transfer of the business P will purchase for cash an interest in the partnership which will bring its interest to 50 percent.

No sales tax liability arises as the result of this series of transactions. The most critical issue is the transfer of business assets by G to the partnership. The transfer meets the requirements of Regulation 1595(b)(2), i.e., 80 percent or more of the assets are transferred and the ultimate ownership of these assets is 80 percent or more unchanged. Therefore, the transfer of business assets by G to the partnership is nontaxable. 7/18/89.

**395.1970 Purchase of Aircraft.** A taxpayer purchases an aircraft from an unrelated party with the intent to utilize the aircraft in the chartering business. After inspection and refurbishing of the aircraft the taxpayer intends to transfer the aircraft to a newly formed corporation in exchange for all of that corporation's shares. The taxpayer holds a valid seller's permit and purchases the aircraft from a person who was not required to hold a seller's permit by virtue of its sales of aircraft.

The taxpayer did not purchase the aircraft for resale but rather for the purpose of transferring it to a commencing corporation in exchange for stock. This is a use subject to tax. The subsequent transfer of the aircraft to the new corporation solely in exchange for first issue stock of that commencing corporation, with no other consideration, is not a sale subject to sales or use tax. 7/27/92.

**395.1988 Sale of Assets to Commencing Corporation.** Parent company (P) transferred certain assets and liabilities to its commencing wholly owned subsidiary (S) in exchange for 100 percent of S's stock. Nine months later, the activities of S were merged back into P. Although P remained jointly liable for the liabilities transferred to S, the transfer nevertheless constituted consideration for the assets also transferred. Since the initial transfer to S was not solely in exchange for the first issue of stock in S, the transfer of tangible personal property was a sale and taxable to the extent of the indebtedness assumed. This is consistent with the 1993 Supreme Court decision in the *Beatrice Co.* case which overturned a contrary 1987 decision of the Appellate Court in the *Macrodyne Industries* case.

Further, the subsequent absorption of S by P could not be viewed as a rescission, particularly because it did not meet the promptness requirements of section 1691 of the California Civil Code. 8/31/94.

**395.1992 Sale of Business—Commencing Corp .** A owned a machine shop as a sole proprietor. On June 26, 1965, he entered into joint venture B with Corporation C to carry out certain operations. As part of the joint venture, Corporation C had the option to incorporate both the machine shop business and the joint venture business into it through the purchase of A's business. The option provided for the issuance of 52 shares of C to A and a note to A for \$30,000 payable in annual installments of \$5,000. The option was for one year and 30 days notice had to be given .A made a covenant that he would not incur debt other than in the ordinary course of business without C's consent.

On December 2, 1965, Corporation D was formed. At its organizational meeting, A was elected president. A offered to transfer all of the assets and liabilities of his business to D for 1000 shares for D's stock. The proposal was accepted.

On the same date, the option agreement between A and C was amended to provide that C would have the option to acquire the 1000 shares of D.

On February 11, 1966, C exercised its option to acquire 1000 shares.

Tax applies to the transfer of assets by A to D since D assumed the liabilities of A. Regulation 1595(b)(4).

The transfer of the stock to C is a nontaxable sale of intangible. While it may be true that had the original option been exercised a sale of tangible personal property would have taken place, the transaction was changed. All of the legal requirements for the incorporation, issuance of stock and subsequent sale of the stock were met. The transaction was not a sham. 3/29/68.

**395.1996 Shareholders Transfer of Stock in Existing Corporation for Stock in Commencing Corporation.** Corporation A, an Ohio Corporation, has all of its operating assets in California. Stock in a commencing Corporation B will be issued by Corporation B to the stockholders of Corporation A in exchange for their stock in Corporation A. Corporation A will, thereafter, be dissolved as a wholly owned subsidiary of Corporation B. All of the assets of Corporation A will thereby be transferred to Corporation B.

Under these circumstances, the exchange of stock will not be subject to tax since the stock is not tangible personal property. The transfer of the tangible assets to Corporation B will not be taxable since it will fall within the scope of Regulation 1595 as a transfer of all or substantially all the assets of an entity and the ultimate ownership will be substantially similar to that which existed before the transfer. 3/25/68.

**395.2000 Step Transaction.** A taxpayer owned a chain of restaurants. It transferred some of its businesses and assets, but not the liabilities, to a newly created corporation owned by the taxpayer. As consideration, the taxpayer received first issue stock in the new corporation. On the same day, the taxpayer transferred the stock to an existing subsidiary in exchange for the assumption of liabilities of the businesses previously transferred to the new corporation.

When a transaction is carried out in a series of steps, each dependent and conditional on the other, the essential nature of the transaction is viewed as a whole. In these circumstances, the transaction is viewed as a transfer of property to the existing subsidiary in exchange for the assumption of liabilities. The transfer of the assets is subject to tax. 11/19/74.

**395.2015 MTE—Transfer to Commencing Corporation.** The transfer of Mobile Transportation Equipment (MTE) to a commencing corporation solely in exchange for the original issue of stock is not a sale, even though less than 80% of the assets of the transferor were transferred. The transaction is nontaxable under Regulation 1595(b)(4).

The lease of MTE is never a sale or purchase for purposes of sales and use tax; rather, the lessor is regarded as using the MTE by leasing it. The rentals of MTE are taxable only if the lessor made a timely election to pay its own use tax liability measured by fair rental value. When a person such as the commencing corporation here acquires MTE in a transfer which is not a purchase, the person does not owe tax on its use of the MTE. Since the person may use the MTE tax free, it does not owe use tax with respect to the lease of the MTE.

On the other hand, the lease of nonMTE tangible personal property is a use by the lessor, and not a continuing sale, only if leased in substantially the same form as acquired and the lessor has paid tax or tax reimbursement on the purchase price. Thus, if a person acquires nonMTE in a nontaxable transfer such as here, it may use the property itself tax free, but its leases of such property would be taxable continuing sales.

If the vehicles in the above transaction are one-way rental trucks, they are treated as any other nonMTE property the lease of which is a continuing sale unless leased in the same form as acquired and the lessor has paid sales or use tax on their acquisition. Since less than 80% of the assets were transferred, the transfer does not come under section 6006.5(b), and the tax-paid status of the equipment in the hands of the transferor is not obtained by the transferee. Accordingly, the rental of the equipment is a continuing sale subject to use tax measured by rental receipts. 1/7/91.

**395.2020 Transfer in Exchange for Stock.** The transfer by taxpayer corporation of certain machinery and equipment to a new corporation in return for its own stock, does not meet the requirements of an occasional sale for two reasons:

(1) The sale did not include all or substantially all of the seller's property held or used in an activity for which a seller's permit is required.

(2) After the transfer, the real or ultimate ownership of the property was not the same as existed prior to the transfer, the transferor owning less than the required 80 percent of the stock in the transferee corporation. 12/10/53.

**395.2025 Transfer of Assets to Joint Venture.** Corporation A is owned 100% by Shareholder 1. Corporation B is owned 60% by Shareholder 1, 20% by Shareholder 2, and 20% by Shareholder 3. Corporations A and B form a joint venture where substantially all of the assets of each corporation are transferred to the joint venture, and each corporation's ownership in the joint venture is based on the ratio of the assets contributed by each corporation to the total assets contributed by both corporations. Corporation A contributes \$3,000,000 in assets and Corporation B \$1,000,000. As a result, Corporation A owns 75% interest in the joint venture and Corporation B owns 25% interest.

For purposes of the occasional sale exemption, Shareholder 1 has an ultimate interest in 90% of the tangible personal property of the joint venture derived through its ownership in Corporation A:  $100\% \times 75\% = 75\%$ , and through its ownership in Corporation B:  $60\% \times 25\% = 15\%$ . Shareholders 2 and 3 each have an ultimate ownership interest in 5% of the property of the joint venture derived through their ownership interests in Corporation B:  $20\% \times 25\% = 5\%$ .

The real or ultimate ownership of the tangible personal property before and after the transfers by Corporation A to the joint venture is as follows:

Shareholders	Interests in Transferor Corporation A	Interests in Transferee Joint Venture	Interests Common Before and After Transfer By Corp. A
1	100%	90%	90%
2	—	5%	—
3	—	5%	—
	100%	100%	90%

The real or ultimate ownership of the tangible personal property before and after the transfers by Corporation B to the joint venture is as follows:

Shareholders	Interests in Transferor Corporation B	Interests in Transferee Joint Venture	Interests Common Before and After Transfer by Corp. B
1	60%	90%	60%
2	20%	5%	5%
3	20%	5%	5%
	100%	100%	70%

Since 90% of the real ownership of the tangible personal property by Corporation A is unchanged after the transfer, Corporation A's transfer of assets to the joint venture exempt from tax under section 6281 and 6367. On the other hand, since only 70% of the real ownership of the tangible personal property of Corporation B is unchanged after its transfer to the joint venture, Corporation B's transfer of assets to the joint venture is subject to tax. 8/6/99. (2000-2).

**395.2030 Transfer of One-Half Interest in Airplane to a Commencing Corp.** A company's transfer of its one-half interest in an airplane to a commencing corporation solely in exchange for that corporation's first issue of stock would not be a sale subject to sales or use tax. 12/11/92.

**395.2040 Transfer of a Portion of Partnership Assets to a New Partnership.** Partnership consisted of three partners holding equal interests therein. Two of said partners form a new partnership and certain assets, including tangible personal property of the old partnership, are transferred to the new partnership. This does not constitute an occasional sale. The transfer did not include all or substantially all of the

property held or used by the first partnership, nor was the real or ultimate ownership of the property substantially the same after the transfer. 7/23/53.

**395.2044 Transfer of Unexpired Portion of Lease.** Assets are being transferred to a commencing corporation solely in exchange for the first issue of stock. No transferor debt is being assumed by the commencing corporation, except that the unexpired portion of certain real property leases are being assigned to the commencing corporation to enable it to conduct business on those premises.

Although the assumption of contingent liabilities is consideration for the transfer of tangible personal property, where the transferee incurs a liability which will arise after the transfer and is for benefits received by the transferee after the transfer, there has been no transfer of liabilities within the meaning of Regulation 1595(b)(4). 3/1/94.

**395.2046 Transfer of Vessel in Exchange for Stock.** A taxpayer is the sole shareholder of a Guernsey corporation. The corporation's sole asset is a vessel, currently under British registry. There is no debt associated with this vessel. The taxpayer proposes to form a new Delaware Corporation of which he will be the sole shareholder. The Guernsey Corporation will then assign title to the vessel for no consideration to the Delaware Corporation. The Delaware Corporation's only asset will be the vessel. As part of this proposed transfer, the vessel's registry will be changed to California. The vessel has, since its purchase several years ago, been located outside the United States in Europe and the Caribbean. After the transfer, the vessel will come to California.

Since the stock issued by the Delaware Corporation is first issue stock and that the assignment of the vessel from the Guernsey Corporation to the Delaware Corporation will be solely in exchange for the first issue stock of the commencing corporation, with no consideration, the transfer is not a purchase subject to use tax. 06/17/96.

## (j) MERGERS AND REORGANIZATIONS

### (1) MERGERS

*Banks, mergers of, see Banks and Insurance Companies*

**395.2055 Corporation Merges with and into a Limited Partnership.** Transfers pursuant to statutory mergers under the California Corporations Code sections 1100 through 1305 are not taxable under Regulation 1595(b)(3) because the transfers are by operation of law and are not considered "sales" under Revenue and Taxation Code section 6006. A transfer of property pursuant to a merger of a corporation with and into a limited partnership under Corporations Code sections 15678.1 through 15678.8 is also a transfer of property by operation of law that is not a "sale" as defined in Revenue and Taxation Code section 6006. Thus, such transfers are not taxable. 4/18/94.

**395.2057 De Facto Merger.** Statutory mergers, which are not taxable, are mergers carried out in accordance with sections 1100 through 1305 of the California Corporations Code or similar laws of other states. De facto mergers include all other mergers and they are sales subject to tax. 6/24/65.

**395.2058 De Facto Merger.** In a statutory merger, the transfer of property is by operation of law and is not regarded as a sale. Thus, no sales tax applies. (Regulation 1595(b)(3).) In a de facto merger, however, the property is not transferred by operation of law, but rather by contract in exchange for consideration. Such a transfer in a de facto merger is a sale and is subject to tax, unless prequalifying for exemption under sections 6281 or 6367. 6/24/65.

**395.2060 General.** A corporation and its two wholly owned subsidiaries were engaged in activities requiring the holding of seller's permits. The parent company agreed to sell its assets and the assets of its subsidiaries, the agreement providing that the subsidiaries would be merged into the parent prior to the effective date of sale. The merger and the signing of the documents of sale occurred on the same date. The property acquired by merger should be regarded as property held or used by the parent in a taxable activity because the merged corporation had become an integral part of the parent. 7/30/64.

[395.2070](#) **Merger.** Corporation A owned all of the stock of Corporation B, which owned all of the stock of Corporation C. Corp. B was merged into Corp. A in a statutory merger. At the same time, A transferred about 75% of the assets formerly owned by B to C. Although A retained all the liabilities it assumed in the merger with B, an amount equal to those liabilities was treated as a loan from A to C and was set up as an intercompany payable from C to A.

The merger resulting in the demise of B is not subject to tax. The treatment of inter-company liability results in the passage of consideration from C to A for the transfer of assets from A to C. The creation of a new debt in exchange for the transfer of assets is a sale from A to C, and is subject to tax unless a specific exemption applies. In these circumstances, the possible relevant exemption is contained in section 6006.5(b), Occasional Sales. Although there may have been no substantial change in ownership of the assets transferred, the transaction fails to meet the requirements of the exemption because the assets transferred were substantially less than 80% of the assets used by A in the course of its activities requiring a seller's permit. 4/12/90.

[395.2080](#) **Merger of Nonprofit Cooperative Associations.** Nonprofit cooperative associations organized under Chapter 4, Div. 6, of the Agricultural Code, are deemed to be corporations. The merger of two or more is required to be made in the manner prescribed by the general laws of the state covering domestic corporations. Accordingly, the transfer of assets from a merged corporation to the constituent pursuant to a merger made in conformity with the provisions of the Corporations Code was not a taxable retail sale. 11/17/64.

[395.2100](#) **Mergers and Statutory Mergers.** A transaction between two or more corporations that involves the sale of all of the assets of constituent corporation/s for stock in a continuing corporation and which is followed by dissolution and liquidation of the constituent corporation/s is not a statutory merger exempt from sales tax. Such transactions are corporate reorganizations within the meaning of section 23251(c) of the Revenue and Taxation Code, but are de facto mergers. 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.

[395.2105](#) **Mergers Under Nonprofit Corporation Law.** A company and both of its subsidiaries are domestic nonprofit corporations organized pursuant to the California Nonprofit Public Benefit Corporation Code. The company has control (via membership) of both subsidiaries but does not, per se, "own" either entity since the two subsidiaries are not stock corporations. The company is considering merging the two subsidiaries. The merger will be in conformance with the California Corporation Code.

The reason a transfer of property pursuant to a statutory merger under section 1100 through 1305 of the California Corporations Code or pursuant to similar laws is not subject to sales tax is that the Board regards the property to be transferred by application of law. The transfer is not regarded to be a "sale" within the meaning of section 6006.

Since the Corporation Code provisions related to mergers under nonprofit corporation law are identical to the general corporation law mentioned above, the transfer of property is by operation of law and is not a "sale" as defined in section 6006. Therefore, no sales tax applies to such a transfer. 6/9/95.

[395.2110](#) **Property Acquired and Used Under Occasional Sale.** Company X purchases tangible personal property ex-tax for resale. Rather than reselling the property, Company X contributes it to Company Y in a nontaxable commencing corporation transfer. Company Y leases the property to Company Z. Companies Y and Z thereafter merge.

Company X is required to report and pay use tax on its purchase price of the property. It improperly purchased the property for resale since its intent was to transfer the property to Company Y in a nontaxable commencing corporation transaction and not to resell the property. Company Y's lease of the property to Company Z is subject to tax since Company Y did not pay tax on its purchase price (nor could it since it

did not purchase the property). Company Y's use of the property is not subject to tax without regard to whether such use occurs upon termination of the lease or after merging into Company Z.

This situation differs from Annotations 330.3650 (12/11/86) and 395.2150 (9/23/71) in that in these annotations, it is the disappearing company's purchase price of the property purchased for resale that is subject to tax if, after the merger, the surviving company uses the property rather than reselling, as is often the case when one of the parties to a merger was making a taxable lease of property to the other party to a merger. This rule does not apply here since the lessor was not a purchaser and could use the property itself (as opposed to selling it in a lease or otherwise) without tax liability. 8/25/97. (M98-3).

**395.2115 Reorganization.** A corporation is considering a tax-free restructuring under Internal Revenue Code section 351. As a result of the reorganization, the new corporation (new company) will become an operating company and will conduct the same operations as the former operating company. The former operating company (old company) will become a holding company. The new company will assume the name of the old company and the old company will change its name. The old company will transfer its operating assets to the new company in exchange for stock in the new company.

There is no tax due on the transfer of assets from the old company to the new company since the transfer of assets is to a commencing corporation in exchange solely for first issue stock (no other consideration involved). (Regulation 1595(b)(4).)

However, if the transfer constituted 80 percent or more of the assets held or used in all of old company's activities which required a seller's permit, the transfer would qualify as an occasional sale under Regulation 1595(b)(2) even if the old company received other consideration, such as the new company's assumption of indebtedness. 5/2/88. (Am. 2000-1).

**395.2118 Statutory Merger.** A merger under an agreement that carries a stamp that shows the agreement is filed with the Secretary of State, coupled with a certificate from the Secretary of State's office that contains the official Seal of California, is acceptable proof that it qualifies as a statutory merger. 1/20/78; 7/26/96.

**395.2120 Statutory Merger and Sale of Assets Distinguished.** A statutory merger is a merger pursuant to section 1100 et seq. of the California Corporations Code or similar laws of other states. Upon the filing of the approved merger agreement with the Secretary of State (or the designated official in the other state), the transferor corporation ceases to exist and without other transfer its assets and liabilities become the assets and liabilities of the surviving corporation.

In a "sale" the transferor receives the consideration for the transfer of its assets and may, or may not, dissolve and distribute the consideration to its shareholders. 3/9/66; 5/12/88.

**395.2130 Statutory Merger—Nonprofit Corporation.** A transfer of property pursuant to a merger, under California Corporations Code section 6010 through 6022 (pertaining to nonprofit corporations), is a transfer of property by operation of law and is not a "sale" as defined in Revenue and Taxation Code section 6006. As such, sales tax does not apply to such a transfer. 9/16/92.

**395.2140 Statutory Mergers.** Statutory mergers do not result in sales tax liability arising as a result of the transfer of the tangible assets of the merged corporation to the surviving or continuing corporation. 4/29/57.

**395.2150 Statutory Merger—Use of Property Received in.** The surviving corporation in a statutory merger becomes subject to use tax when it acquires from the merged corporation and uses equipment previously acquired by the merged corporation ex-tax for resale and leased to the surviving corporation. The person of the merged corporation continues in the survivor and the ex-tax status of the equipment and the obligation of the merged corporation with respect to it carries over to the survivor. 9/23/71.

**395.2155 Transfer of Assets Followed by Statutory Merger.** Corporation A was merged into Corporation B. Subsequently, Corporation B was merged into its parent, Corporation C, and operated as a division.

Before the merger occurred, the assets of Corporation B, which was a separate legal entity, were transferred onto the books of Corporation C. The transfers were made in the corporate books and records by recording an intercompany account receivable for Corporation B and an account payable by Corporation C. Following the transfers, Corporation C depreciated the equipment as its own capital assets and paid the property taxes. No sales or use tax had been paid on the transfer of the assets from B to C since management had intended to ultimately merge two corporations together; however, the merger was delayed for almost a year.

When the assets were transferred from Corporation B to Corporation C, a sale took place which was subject to tax. The fact that no money was exchanged at the time of the transfer and that the payable and receivable were canceled upon merger, does not extinguish the tax debt owing to the state. As such, the surviving corporation, Corporation C, was responsible for the payment of the tax. 2/23/73.

**395.2156 Transfers of Business Assets in Exchange for Stock in an Existing Corporation.** An individual transferred his business assets, including the name and goodwill of that business, to an existing (operating) corporation in exchange for shares in that existing corporation and an assumption of the individual's business liabilities. The transfer does not qualify as a nontaxable statutory merger. Instead, the transfer is a sale because the individual transferred tangible personal property for consideration, the stock and the assumption of liabilities. Tax is due measured by the value of the stock plus the amount of the assumed liabilities. 9/24/71.

**395.2157 Transfer of Capital Equipment Between Subsidiaries.** Company A owned a chain of fast food restaurants. It transferred certain capital equipment to Company B. Companies A and B were wholly owned subsidiaries of Company C. Company A was not successful and it was decided to convert its existing restaurants into Company B's restaurants. The restaurants that could not be converted were to be closed. It was also decided to merge Company A into Company B "on the last day of fiscal 1971." As of December 20, 1970, Company A owed Company B \$630,000. Company A transferred to Company B various properties on December 20, 1970; February 14, 1971; April 11, 1971; May 9, 1971, and July 4, 1971. On July 3, 1971, Company C transferred its capital stock in Company A to Company B. In anticipation of the transfer, on June 23, 1971, the directors of Company B authorized the merger of Company A into Company B. The merger was legally effective August 1, 1971.

Company A believes that the five transfers were only steps in the tax free liquidation of Company A and that no taxable transactions or sales of assets took place between the subsidiary corporations. Company A also believes that all transactions were made as a general plan of reorganization and do not bring about a taxable event. Company A argues that: (1) the sales were exempt occasional sales under sections 6006.5 and 6367, (2) the transfers were not for value, (3) the transfers were not sales, or (4) the transfers were "forced transfers more akin to the taking of title to assets by a creditor to satisfy an indebtedness."

Tax is properly due in this case. Although Companies A and B are related corporations and it was contemplated that Company A would be liquidated into Company B, several sales actually took place. The tax could have been avoided if Company A had sold all of its assets to Company B in a single sale, or if title to Company A's assets had passed to Company B by operation of law as a result of a statutory merger. However, neither of these courses of action were followed by the parties.

With respect to Company A's specific arguments: (1) The sales are not exempt under sections 6006.5 and 6367 because the property transferred was held or used in the course of an activity requiring the holding of a seller's permit and the transfers were not, individually, transfers of all or substantially all of the property held or used by Company A in its permit requiring activities. (2) The transactions are clearly "sale" transactions and the transfers would be for "value" even if Company B merely canceled a portion of Company A's outstanding indebtedness in exchange for the assets. (3) Cancellation of indebtedness is sufficient consideration to support the transfers as sales transactions. (4) It is immaterial that Company A

may have been in the position of a “threatened” debtor of B. The transfers were entirely voluntary. Even if Company B seized the assets of Company A pursuant to the default provisions of a general financing agreement, tax would be applicable on the sale of the assets in satisfaction of outstanding obligations. 1/14/72. (Am. M99-1).

**395.2158 Commencing Corporation—Assumption of Liabilities.** A taxpayer performed a “spin-off” of one of its many divisions by transferring the real property, intangible rights, office equipment, computers, furniture, and other equipment to a wholly owned subsidiary corporation in exchange for the first issue of stock in the subsidiary. In addition, the subsidiary assumed the taxpayer’s liabilities that were associated with that division. None of the liabilities assumed by the subsidiary was attributable to any tangible personal property transferred.

Even though the liabilities assumed by the commencing subsidiary corporation were not attributable to the tangible personal assets, the amount is consideration for all the assets transferred, including the tangible personal property assets located in California. The law, in the case of assumption of liabilities given in exchange for assets, does not limit the taxable consideration only to those liabilities which were directly attached to the specific tangible personal property asset(s). Therefore, it is proper to make an allocation of such consideration to assets subject to tax. 3/8/94.

## (2) REORGANIZATIONS

**395.2160 Corporate Reorganizations.** The sequence of the transactions is as follows:

(1) Corporation B is a wholly-owned subsidiary of Corporation A. Corporation A transfers all of its shares of B’s stock back to B in exchange for B’s assets and liabilities so as to come within the terms of section 334(b), of the Internal Revenue Code.

(2) Corporation C is another wholly-owned subsidiary of Corporation A. All of the assets and liabilities of C are transferred to Corporation A in liquidation so as to come within the terms of section 332, of the Internal Revenue Code.

(3) Corporation A transfers to Corporation C all of the assets and liabilities received from Corporation B in exchange for stock and an interest bearing note so as to come within the terms of section 351, of the Internal Revenue Code.

The transfer in (1) from Corporation B to Corporation A is not subject to tax, since the transaction is either an occasional sale or a sale for resale (since Corporation A made no use of these assets other than transferring them to Corporation C). The transfer in (2) is exempt from tax as an occasional sale. However, for the transfer in (3) to be an occasional sale, it must consist of “all or substantially all of the property” of the transferor, as required by Revenue and Taxation Code section 6006.5(b). The requirement is met if the tangible personal property formerly belonging to Corporation B, which was transferred to Corporation A and then to Corporation C, represents 80 percent or more of the total tangible personal property held by Corporation A. 7/29/59; 8/7/59. (Am. 2004-2).

**395.2161 Corporate Reorganization.** Corporation A transferred its assets to Corporation B, and in turn B issued some of its preferred stock to A. The stock was held in trust pending the recall of outstanding Corporation A stock and the issuance of Corporation B stock for the A stock.

There are three separate and distinct steps in accomplishing the consolidation as A’s officers have termed the transaction:

- (1) Assets were exchanged for stock in an already existing corporation.
- (2) Stock was exchanged for stock.
- (3) A was dissolved.

The change in corporate names, etc., does not alter the above three basic and separate acts. The transaction is admittedly not a statutory merger. A's transfer of tangible personal property for stock in an existing corporation is a taxable sale within the meaning of the term as defined in the Sales and Use Tax Law. 2/15/67.

**395.2161.010 Corporate Reorganization.** "T" is a wholly owned subsidiary of "A," which is a wholly owned subsidiary of "G." "G's" class A shares are sold on NASDAQ. Its class B shares are closely held by less than fifteen persons. The assets of "T" include tangible and intangible assets and, specifically, almost 340,000 shares of class A stock of "G."

"T" proposes to transfer all of its assets, except its class A shares of "G," to a newly formed subsidiary, "N," in exchange for first issue stock. Immediately after the transfer, "T" will own 100% of the shares of "N."

Pursuant to a plan of reorganization, which was adopted for valid business reasons, "T" will distribute its shares in "N" to "A." "A," in turn, will distribute the shares to its parent, "G." "G," in turn, will distribute and contribute the shares to a newly formed subsidiary. "I," in exchange for all of the stock of "I."

The net effect is that "N" will become a wholly owned subsidiary of "I" which will be a wholly owned subsidiary of "G."

"G" will then "spin-off" and distribute the class A shares of "I" to its class A shareholders, except for those shares held by "T," on a share by share basis. The class B shares of "I" will be distributed to the class B shareholders of "G." As a result, "I" will become independent of "G" and its shares will be held by the shareholders of "G" in the same proportion as they hold shares in "G."

Under these circumstances, the following conclusions have been reached.

- (1) The transfer of assets from "T" to "N" is an exempt occasional sale. All of the tangible personal property of "T" has been transferred and the real or ultimate ownership remains the same.
- (2) The transfers of stock among the various entities will not give rise to any sales or use tax liability.
- (3) It will be necessary to obtain a clearance from a local Board office to effect the transfer of vehicles from "T" to "N" without payment of tax.

These conclusions are based on the assumption that there are valid business reasons, other than the avoidance of sales and use tax, for the handling of the transactions. 1/15/93.

**395.2162 Corporate Reorganization.** Corporation A is engaged in several endeavors including the leasing of tangible personal property. It has three wholly owned subsidiaries, B, C, and D. Corporation B owns four inactive subsidiaries (IX, X, XI, and XII). Corporation C owns one active subsidiary (V) and three inactive subsidiaries (VI, VII, and VIII). Corporation D owns one active subsidiary (I) and three inactive subsidiaries (II, III and IV). Corporation D also is the parent of Corporations E and F.

In order to simplify its operations, Corporation A proposes the following action:

- (1) Corporation B will distribute to Corporation A all of its stock in subsidiary IX as a dividend.
- (2) Immediately thereafter, Corporation A will contribute all of its stock in Corporation B to subsidiary IX. Corporation A will not receive consideration for the transfer.

(3) Corporations C and D and Subsidiaries I and V will be merged into Corporation B. The outstanding stock of Corporations C and D will be exchanged for stock in Subsidiary IV. The outstanding stock in Subsidiaries I and V will be canceled.

Steps 1 and 2 are not subject to tax since they involve the sale of stock, an intangible.

If step 3 is a statutory merger, no tax would apply. Also, if it is a statutory merger, no tax would apply to any subsequent leases of property by the surviving corporation if the property had been acquired tax paid by the predecessor corporations. If acquired ex-tax by the predecessors, tax would continue to apply to rental receipts. 11/6/84.

**395.2163 Corporate Reorganization.** A group of shareholders of Corporation A will sell all of their shares in the corporation for cash and notes receivable. Corporation A will then create a new subsidiary, B, and transfer a portion of its real property assets in exchange for stock. The stock of B will then be transferred to another group of Corporation A stockholders in exchange for shares in Corporation A held by this group.

Since none of the transactions involve the transfer of tangible personal property, no sales or use tax liability arises. 1/31/95

#### **(k) DISSOLUTION; LIQUIDATION; DISTRIBUTION OF ASSETS**

**395.2177 Cash Dividend, Substantial Change in Ownership—Not a Sale.** Company A declared a stock dividend of 32 shares of common stock for each share of common stock held by its two shareholders. Prior to the stock dividend, Company B and Company C each held 25,000 shares. Each shareholder had the option to receive cash in lieu of the stock at a set price per share. Neither B nor C provided any consideration to A as part of the transfer of the stock or cash.

The distributions to Company B and Company C resulted in a change in the amount of stock owned by each party. The key to what occurred, however, is the fact that the ownership of Company A's tangible personal property did not change. Company B increased its percentage ownership of the stock of Company A, but did not ever obtain any ownership interest in the assets owned by Company A. The ownership of stock is different than the ownership of tangible personal property and the ownership of one does not equate to the ownership of the other. This means that Company B's increased ownership of Company A stock did not result in Company A selling any of its tangible personal property to Company B. Thus, the percentage change in stock ownership by the parties is not subject to tax. 10/21/97. (M99-1).

**395.2180 Court-Appointed Supervisor.** A person appointed by the court to supervise and direct the involuntary dissolution of a corporation acts on behalf of the corporation when he negotiates a sale of the assets. Accordingly, the sale is not exempt as an occasional sale on behalf of the shareholders. 8/12/64.

**395.2190 Dissolution of Partnership/Joint Venture.** Where company A transferred 49% of its interests in various joint ventures to Company B, a wholly owned subsidiary, and the joint-venture agreements did not, prior to the transfer, contain a clause providing that such a transfer would not result in a dissolution of the partnership (Sec. Corp. Code *f*15031(b)), such transfers caused a dissolution of the joint-ventures with the result that there was a taxable sale of tangible personal property. 12/19/90.

**395.2193 Dissolution and Transfer of Assets.** A limited partnership consisting of Corporation A and Gift Trust B is in the business of leasing, selling, and repairing equipment. Corporation A is owned by husband X and wife Y (81%) and their son Z (19%). Z also is the sole trustee of Gift Trust B. The partnership plans to liquidate and distribute the assets to the partners in accordance with their respective interest as provided in the partnership agreement. The liquidation of the partnership will not be subject to any liabilities (i.e., the partners would not assume any liabilities of the partnership). After the liquidation, Corporation A will operate the business at one of the sites of the partnership. Gift Trust B will transfer the assets it receives from the partnership into a limited liability company (LLC). Gift Trust B's other assets, which consist of cash and other investments but no tangible personal property, will remain in the gift trust

and will not be transferred to the LLC. The LLC will operate the business at the other sites previously operated by the limited partnership.

The parties have valid and legitimate business reasons for structuring the transactions in this manner and will not be doing so for the purpose of avoiding California sales and use tax. Thus, the series of transactions will not be disregarded. Tax would apply to the series of transactions as follows:

(1) The transfer of the partnership assets to the partners would not be subject to tax since the partners will not assume any liabilities of the partnership.

(2) The Gift Trust's transfer to the LLC is exempt from tax as an occasional sale since it is transferring at least 80% of the tangible personal property it held or used in the course of its selling activities to the LLC, and the Gift Trust will maintain at least 80 percent ownership of LLC at the conclusion of the transfer. 6/21/96.

**395.2194 Dissolution and Transfer of Assets.** A limited partnership consisting of Corporation A and Gift Trust B is in the business of leasing equipment and holds a seller's permit. Corporation A is owned by husband X and wife Y (81%), and their son Z (19%). Z also is the sole trustee of Gift Trust B.

The partnership plans to liquidate and distribute the assets to the partners in accordance with their respective interests. The assets distributed are subject to liabilities which will be assumed by the partners based on their respective interests.

After the liquidation, Corporation A will operate the business at the same site of the partnership.

Gift Trust B will transfer the assets it receives into a Limited Liability Company (LLC). The LLC will be the subject to the liabilities of the assets transferred. X and Y will contribute cash equivalent to 50% of the assets of the LLC and, thereafter, X and Y will hold a 5% interest in the LLC and Gift Trust B will hold a 95% interest.

Assuming the transactions were not undertaken solely for the purpose of avoiding or altering the sales and use tax liabilities of the parties, tax would apply to the series of transactions as follows:

(1) The transfer of partnership assets to Corporation A would be subject to tax to the extent of the liabilities assumed.

(2) Likewise, the transfer of partnership assets to Gift Trust B is subject to tax measured by the liabilities assumed.

(3) The transfer of assets by Gift Trust B to the LLC is an exempt occasional sale since it constitutes more than 80% of Gift Trust B's assets and Gift Trust B has more than an 80% interest in the LLC. 12/21/95.

**395.2200 Distribution of Capital Investment.** "A" and "B" form Corporation "C," each contributing an equal amount of capital and receiving equal shares in the corporation. During the course of operations "A" loaned a substantial amount to the corporation. When dissolution of the corporation was effected, "A" received practically all of the tangible personal property of the corporation and treated the transaction as in satisfaction of the corporation's debt to him, charging off as a "bad debt" the difference between his loan to the corporation and the book value of the assets transferred. No assets were distributed to "B."

This is not an exempt distribution of a capital investment. The tax applies to the transaction, the sales price being the book value at which held by the corporation. 9/16/53.

**395.2220 Distribution of Corporate Furniture** to a stockholder for stock pursuant to plan merely to reduce stated capital (not in final liquidation of corporation) is a taxable transaction. 8/14/51.

[395.2240](#) **Distribution of Equipment in Lieu of Profits.** The sales tax applies to the distribution of equipment other than as a step in liquidation from a joint venture consisting of four partners to two of the partners who are accepting the equipment in lieu of cash as their prorated share of profits. 8/21/69.

395.2265 **Dividend in Kind.** Transfer of all property of a division of a corporation to a sole shareholder as a dividend is considered a sale to the sole shareholder if the sole shareholder assumes any liabilities of the corporation. The transfer of the assets to the sole stockholder is a sale because the sole stockholder gave consideration for the assets by assuming the liabilities. 4/2/93.

395.2275 **Joint Ventures—Transfers at Termination.** A joint venture transferred assets from its books of account to other joint ventures of the same real or ultimate ownership. The transfers were made only upon the natural termination of the enterprise for which the joint venture was created. The joint venture agreements indicate that the parties contemplated a sale of joint party assets upon completion of the joint venture work. In absence of a sale, there was to be a distribution of the assets in kind. For accounting purposes, the transfers were credited to the joint venture's investment accounts and later were debited directly to the account of the entities receiving the assets.

While the matter is not entirely free from doubt, it appears that the proper interpretation is that the transfers represent distribution in kind and not sales. It also appears that the parties decided to transfer the assets to the other entity only upon liquidation and in the absence of sales of the assets. This is indicated by the following:

- (1) The transfer occurred only upon final termination of the joint venture enterprise.
- (2) The parties' agreement provided for distributions in kind upon termination of the joint venture in absence of sales of the property.
- (3) There was no bargained-for exchange between strangers in the usual sense.
- (4) There is no indication of a predetermined plan to transfer the assets from one joint venture to another.
- (5) The entries in the capital accounts indicate that, at the time of the transfer, there was also a withdrawal of the "investment" represented by the assets transferred.

The subsequent transfers to the other joint ventures should be treated as contributions of capital unless there is evidence that the respective partners received consideration other than an interest in the joint venture, such as assumption of loans payable, cash payment or other taxable consideration. 8/4/65.

[395.2280](#) **Liquidating Dividend and Transfer to New Corporation.** An individual buys all of the outstanding stock of a closely held corporation. He dissolves the corporation and receives its assets in exchange for the stock. He then forms a new corporation by transferring the same assets to it, and receives from it only stock. A liquidating dividend does not constitute a sale under section 6006, and therefore the transfer to the individual by the existing corporation does not constitute a sale. The sale by the individual of the assets received from the corporation in exchange for stock constitutes a sale under section 6006. However, receiving stock in exchange for assets with which the corporation is capitalized incurs no sales tax liability because the gross receipts by which the sales tax is measured is zero. Furthermore, unless there is a series of sales by the individual, or he uses the assets in a taxable business enterprise, the sale by him to the corporation would be an occasional sale under section 6006.5, and exempt from taxation under section 6367. 1/3/63.

395.2291 **Liquidation of Partnership/Subsequent Sale by Partners.** A partnership's sole business has been to lease trucks and equipment to one corporation. All trucks and equipment leased were purchased tax paid to vendors and leased in substantially the same form as originally purchased. The partnership did not have a seller's permit since none was required. The partnership is comprised of three related individuals, A, B, and C. It is contemplated that the partnership will be terminated and its assets distributed to the partners in liquidation. Each partner will receive a  $\frac{1}{3}$  undivided interest in all the assets which consist entirely of the

trucks and equipment. Upon liquidation of the partnership, partners B and C will sell each of their  $\frac{1}{3}$  undivided interests to individuals D and E.

A, D, and E will then form a new partnership and each will transfer his  $\frac{1}{3}$  interest in the trucks and equipment to the new partnership as a capital contribution. The new partnership will continue to engage solely in the business of leasing the trucks and equipment to the same corporation.

First, the termination of the partnership and the distribution of assets in liquidation to the partners will not occasion the application of tax because the transaction is not regarded as a "sale" under section 6006 since no consideration was received.

Second, the sale by partners B and C of their interests in the assets would be subject to tax to the extent that the assets include vehicles taxable under chapter 3.5 of the Sales and Use Tax Law. Assuming that partners B and C are not licensed or certified pursuant to the vehicle code or dealers, the applicable tax will be use tax payable by purchasers D and E. The measure of tax with respect to the vehicles would be that portion of the total purchase price of the assets attributable to the transfer of the vehicle.

Third, the transfer by A, D, and E of assets to a new partnership as a capital contribution will not occasion the application of tax. Regulation 1595.

Fourth, the lease transaction between the new partnership and the corporation will be subject to tax to the extent that the items leased do not qualify as mobile transportation equipment. The tax will apply because the property will not be "tax paid" in the hands of the lessor, the new partnership. The new partnership will not have an election to place the nonmobile transportation assets on a "tax paid" basis since the assets would have been acquired in a tax free transaction. Further, the "tax paid" status would not carry over since the "transferor" would be A, D, and E as individuals and not the terminating partnership.

Fifth, to the extent that the new partnership is leasing mobile transportation equipment, these leases will not be regarded as sales and the tax will not apply. 8/16/76.

[395.2296](#) **Liquidation Sale Versus Liquidation Dividend.** Liquidation sales are treated like any other sales. Property distributed to shareholders in kind as a liquidating dividend with no assumption of indebtedness is not a sale since there is no consideration. 2/19/87.

395.2300 **Liquidation as a Use.** A corporation is required to pay the use tax under section 6094 when it transfers by way of a liquidating dividend to its sole shareholder property purchased tax free for resale and the shareholder does not hold the property for resale in the regular course of business. The corporation has not resold the property in the regular course of its business, and therefore has made use of it as use is defined in section 6009. 7/20/59; 12/13/82; 2/24/83.

395.2320 **Notice of Dissolution.** Notice of dissolution of a partnership through publication in the local newspapers of a notice of bulk sales transfer is not effective in relieving the taxpayer from taxes accruing after such publication. The Board must have actual notice of the dissolution before the taxpayer would be entitled to relief. 4/26/67.

395.2325 **New Partnership.** A partnership and an unrelated person form a new partnership. The old partnership contributes the assets of the partnership and the unrelated person contributes other assets to the new partnership. The new partnership assumes the liabilities of the old partnership. The assumption of liabilities constitutes consideration for the assets transferred and tax applies.

Should the individual partners of the old partnership claim that the partnership assets were first distributed to them as individuals and were then contributed to the new partnership, and at the same time maintain that the new partnership is assuming the old partnership liabilities, tax would still apply. The Board would not recognize that a dissolution has occurred since a dissolution would require that the partnership liabilities be paid. 3/8/60.

395.2335 **Partial Dissolution of Corporation and Consequent Distribution of Assets.** Partnership A originally obtained a ground lease and constructed a hospital. Partnership A formed Corporation B, which it wholly owned, to operate the hospital. Partnership A leased the hospital to B which operated it. On December 5, 1963, Corporation B was partially dissolved and the assets were distributed to the shareholder, Partnership A. On December 31, 1963, substantially all of the property was transferred by A to C. There is no evidence of any contracts of sale or any negotiations before the transfer. B continued to operate the hospital from December 5 to December 31, but had no property rights after the partial dissolution.

The distribution of the assets by B was a tax-free distribution of assets to its shareholder. The subsequent sale by A of assets used in its service enterprise and not in an activity for which it was required to hold a seller's permit is an exempt occasional sale. 7/25/66.

395.2340 **Partial Liquidation of Partnership.** Where a partial liquidation is in form and reality a liquidation, tax does not apply. For example where partnership desires to liquidate one portion of its business and the assets relating to that portion are distributed free and clear of any liabilities to the partners in accordance with their interest in the partnership assets, the distribution is not subject to tax. 5/7/56.

395.2460 **Sole Shareholder.** Where a corporation did not agree to sell its assets and had no agreement whatsoever with the ultimate purchaser, a liquidation distribution by it to the sole shareholder, followed by a sale of such assets from such shareholder to a new purchaser, constitutes an exempt distribution and an exempt occasional sale. 12/28/53.

[395.2470](#) **Special Effects Corporation.** In June 1989 an individual incorporated a special effects business for the sole purpose of creating special effects on a production for a studio. The corporation entered into a contract with the studio to prepare the special effects. Concurrently with the execution of the contract, the individual who was the sole shareholder of the corporation agreed to sell all the stock of the corporation to the studio after the picture. After the studio acquires the stock, it will either liquidate the corporation or cause it to cease doing business.

The work performed by the corporation for the studio is nontaxable "qualified production services". The sale of the stock by the individual to the corporation is a nontaxable sale of an intangible asset. The liquidation of the corporation would not be taxable if it were a ratable distribution in kind of corporate assets to shareholders, provided no consideration is paid by the shareholders for the asset (such as assumption of liabilities). Further, unless the corporation qualified as a retailer by engaging in some other activity (e.g. making two or more sales in a twelve-month period) a sale of assets upon liquidation would qualify as an exempt occasional sale, under Revenue and Taxation Code sections 6006.5(a), and 6367. 10/6/89.

[395.2473](#) **"Step Transactions."** A partnership forms a wholly owned corporation. Five other corporations are merged into the new corporation in a statutory merger. The shareholders of the five other corporations receive cash or a promissory note in cancellation of their shares. The new corporation is then dissolved into the partnership with the partnership receiving all the assets in a complete liquidating distribution.

If each step were analyzed separately, no sales or use taxes would be applicable to any of the separate steps. However, it appears that the only reason for the step transaction was for the partnership to acquire, for cash and/or promissory notes, the tangible personal property of the five corporations without incurring sales or use tax liability. If such is the case, the intervening steps would be ignored and the only relevant factors would be that cash or promissory notes were paid by the partnership for the acquisition of the tangible personal property. See also *Commission v. Court Holding Co.* (1944) 324 U.S. 331,334. 4/9/93.

395.2475 **Stock Exchanged for Corporation Assets.** Corporation X had several branch offices selling and servicing automobiles. Pursuant to the policy of the manufacturer of the automobiles to decentralize its dealers, it was decided to create separate entities at each branch, otherwise all branches would lose their franchise. Accordingly, a contract was entered into whereby two of the three shareholders each turned his

one-third interest as shareholder over to the corporation in exchange for one-third of the assets of the corporation.

The transfer of the property to the former shareholders for their shares is a taxable transaction. In this case corporation X was not dissolved since there was no distribution of the entire assets to its shareholders. Only two of the three shareholders exchanged their stock for assets of the corporation. 1/25/52.

**395.2485 Transfer of Property to Stockholders.** Transfer of property to a minority stockholder in payment for his shares of stock constitutes a sale rather than a distribution of assets upon dissolution. Accordingly, the transaction is subject to tax unless it is exempt as an occasional sale within the meaning of section 6006.5. For example, if the corporation was engaged in an activity not requiring the holding of a seller's permit, the sale of property, or some portion thereof, may be exempt from tax by section 6006.5(a). 1/2/52.

#### **(I) SALES BETWEEN PARENT AND SUBSIDIARIES**

**395.2493 Election Under Federal IRC 338.** Under IRC 338, a corporation which makes a "qualified stock purchase" of a target subsidiary corporation may elect to have the target treated as if it (1) sold all of its assets at fair market value in a complete liquidation on the acquisition date and (2) as a new corporation bought all of its assets on the next day at a price determined by the purchasing corporation's basis in the target's stock.

The "deemed" sale of assets provided by IRC 338 does not constitute a "sale" for sales and use tax purposes since only stock certificates were sold. 3/7/86.

**395.2500 Fixed Assets.** The sale of fixed assets not needed by a subsidiary to the parent corporation is not exempt from the sales tax under section 6006.5. An occasional sale to be exempt must be of all or substantially all of the seller's assets. Further, the sale of property held by the subsidiary in the course of an activity for which it was required to hold a seller's permit, even though made as an accommodation to the parent corporation, does not detract from the subsidiary's status as a seller required to report all retail sales and pay the sales tax in accordance therewith. 9/17/64.

**395.2508 Inter-Company Transfer of Fixed Assets.** Company A, a wholly owned subsidiary of Company B, manufactures and sells medical equipment in California. Company B also manufactures and sells medical devices and does business through divisions or "units" located in Texas, Utah, and California. Company B's California unit used the same facilities as Company A. In two consecutive quarters, various assets such as computers and microscopes were transferred from B's Utah unit to Company A. In the following quarter, other assets were transferred from B's Texas division to Company A. All assets were recorded in Company A's fixed asset account at the net book value. The following conclusions apply:

(1) The assets were all booked as capital assets in Company A's accounts. This is evidence that Company A had possession and use of them. The accounting treatment is prima facie evidence that Company A had both title and possession of these assets. The records of Company A reflected liabilities owing to Company B as a result of these transfers. Company A's promise to pay Company B for the assets constituted consideration even if the debt was never paid.

(2) Since Company B was engaged in the business of manufacturing and selling tangible personal property which would require the holding of a seller's permit, the sales do not qualify as exempt occasional sales.

(3) Since there is no evidence to suggest that title to the equipment passed in California rather than at the out-of-state shipping point, nor is there any evidence of local participation in the sale by any office, representative or other place of business of Company B's, Company A is liable for use tax. 11/22/91.

395.2520 **Simultaneous Transfer to Subsidiaries.** The simultaneous transfer of all of the assets of a corporation to one or more wholly-owned subsidiaries is an exempt occasional sales under section 6006.5(b) of the Sales and Use Tax Law. 12/3/56.

395.2540 **Subsidiaries—Various.** A parent corporation has five wholly-owned subsidiaries. Subsidiary 1 and subsidiary 5 each own two wholly-owned subsidiaries which you call A and B, and C and D, respectively. The parent corporation owns two manufacturing plants X and Y. In order to carry on certain operations more economically, the parent corporation (a) caused subsidiary Corporation 2 to transfer a plant and its equipment to subsidiary Corporation 3 in return for a promissory note, and (b) caused subsidiary Corporation A to transfer to Corporation 3 a similar type of plant and equipment in return for a promissory note. The parent corporation transferred the two manufacturing plants X and Y to Corporation 3 in return for a promissory note.

In each case, the transfers (a) include tangible personal property— machinery—equipment—automotive equipment—raw materials—supplies and some finished inventory; and (b) represent all or substantially all (Units X and Y are separate manufacturing plants of Corporation A, the parent) of the property of the subsidiaries.

The transfers by subsidiary Corporation 2 and subsidiary Corporation A to the subsidiary Corporation 3, being in each case transfers of all or substantially all of the property of those corporations to a commonly owned corporation, are occasional sales within the meaning of section 6006.5(b).

If manufacturing plants X and Y constitute all or substantially all of the property of the parent corporation held or used in the course of an activity for which a seller's permit is required, that transfer also would fall within the occasional sale definition of section 6006.5(b). However, if these units are not all or substantially all of the property held or used by the parent corporation in an activity requiring a seller's permit, then this transfer would not be an occasional sale within the meaning of section 6006.5(b). 6/29/54.

395.2541 **Transfer of Assets to a Division.** On 9/12/72, the Board of Directors of Corporation A approved the transfer of assets of a division to Corporation B, a wholly owned subsidiary of A. The transfer took place on 11/7/72. On 9/12/72, its Board also approved in principle the transfer of assets of another division and certain real property to Corporation C, another wholly owned subsidiary. The transfer of the division was completed on 1/18/73 and the transfer of the realty was carried out on or before 1/18/73. If all of the transfers are treated as one transaction, it would meet the qualifications of the provisions of section 6006.5(b).

The transfer to subsidiary B is subject to tax. section 6006.5(b) speaks in terms of the "transfer." The test must be met immediately after the transfer. In the case of the transfer to B, A continued to own assets immediately after the transfer; thus, it failed to meet the statutory requirements.

In the case of the transfer to C, the statutory requirement was met and the transaction qualifies as an occasional sale. 5/21/75.

395.2543 **Transfer of Assets to Subsidiary.** Corporation A acquired the assets and liabilities of Corporation B by way of a statutory merger. In turn, 75 percent of the assets and liabilities acquired from Corporation B were subsequently transferred to a subsidiary of Corporation A. This second transfer was necessary to meet the requirements of the indentures governing Corporation A's publicly issued debt.

Since substantially all of the assets of the newly merged corporation were not transferred to the subsidiary, the transfer is subject to tax. The fact that the Internal Revenue Service treated the transaction as an exempt transfer has no bearing on sales tax liability. In addition, the transfer does not qualify for the treatment offered in the *Macrodyne* case because in that case the transfer was to a pre-existing corporation not a newly formed corporation. Subsequently, *Macrodyne* was at least partially limited in *Industrial Asphalt Corporation et al v. SBE*. Finally, the *Lockheed* case, an unpublished case, has no weight as precedent. It involved the restructuring of a corporation made to avoid bankruptcy which was a condition imposed by creditors. (**Please Note:** *Macrodyne* has also been over-ruled in the *Beatrice* decision.) 11/19/92.

[395.2544](#) **Transfer of Assets to Subsidiary.** A taxpayer, a California general partnership, conveyed certain assets to its wholly owned subsidiary corporation. The conveyance was described in the transfer agreement as a “contribution to capital.” The conveyance was not given in exchange for stock, and the subsidiary assumed certain liabilities as part of the transaction.

While capital contributions are generally not taxable, if the transfer is subject to debt assumed by the transferee, the transaction does not qualify as a capital contribution for sales and use tax purposes, but rather is a taxable sale measured by the assumed liabilities. Where the property transferred, as in this case, includes both tangible personal property as well as other property (such as stock or real property), the consideration must be allocated between the taxable sale of tangible personal property and the nontaxable sale of other assets. The allocation would be as follows: Tangible personal property conveyed divided by all assets conveyed multiplied by liabilities assumed equals taxable measure.

The parties to the transaction are not permitted to allocate liabilities among the assets transferred to reduce the tax liability. Hence, if the only liability assumed was a mortgage against real property, the Board would not consider that there was no taxable consideration paid for the tangible personal property component of the sale. Rather, the formula described above would be used to allocate a portion of the assumed liabilities to the sale of the tangible personal property. 8/01/96.

395.2546 **Transfer to a Subsidiary.** A corporation transferred less than 80 percent of its assets to a newly formed subsidiary. It received stock in the subsidiary. In addition there was an entry of a note receivable on the books of the parent and an entry of a note payable on the books of the subsidiary. The book entries evidence consideration for the assets. The transfer was therefore a taxable sale, not a contribution to capital. 7/11/94.

395.2547 **Transfer of Tax Paid Rental Equipment.** A parent corporation owns 100% of the issued and outstanding stock of Corporations A and B and 75% of the issued and outstanding stock of Corporation C. Corporations A and C operate equipment rental yards, have elected to pay tax upon the acquisition of their equipment, and have not charged tax on their rental receipts. Corporation B leases equipment but does not operate an equipment rental yard.

The parent corporation has Corporation A transfer all of the assets used in the operation of two of its three yards to Corporation B and all of the assets of its third yard to Corporation C. The transfer would cover substantially all of the assets of Corporation A. In consideration for the transfer, Corporation C would issue additional stock to the parent corporation so that the parent corporation would own 90% of the stock of Corporation C immediately after the transfer.

Under the above conditions, the transfer by Corporation A of substantially all of its assets to Corporations B and C would qualify as an occasional sale under Regulation 1595, which provides for a transfer of substantially all of the property without a substantial change in ownership. Also, the rental receipts derived from the equipment acquired by Corporations B and C would not be subject to tax under Regulation 1660. The regulation provides that if property acquired in a transaction which qualifies as an occasional sale under Regulation 1595 is leased in the same form as acquired and the transferor had paid sales tax reimbursement or use tax, the rentals derived from this property are not taxable. 6/4/71.

395.2548 **Transfers by Book Entries.** Company E was a wholly owned subsidiary of Company V. An employee of Company E purchased all of the capital stock of Company E from Company V. Company E then transferred certain physical assets to Company V. The proceeds were “offset against the stock purchase obligation.” The transfer occurred after the purchase of the stock by the employee of Company V.

The transfer was not “simply a bookkeeping adjustment.” There was a sale which was subject to tax. Even if the transfer occurred before the stock purchase, tax would have been due because there was a transfer of property for consideration. 2/8/94.

395.2549 **Transfer of Vehicles Between Subsidiaries.** Company A and Company B are wholly-owned subsidiaries of Company C. Company A issues bonds the proceeds of which are used by Company C to pay debts owed by Company B. As part of the bond issue, Company B is required to transfer title to 1,000 of its fleet vehicles to Company A. This constitutes a sale of the 1,000 vehicles by Company B to Company A. Tax is due on the purchase price of these vehicles regardless that both B and A are wholly-owned subsidiaries of C. Companies A and B are each separate corporations and are, therefore, regarded as separate persons under the Sales and Use Tax Law. 7/1/97. (M98-3).

395.2550 **Transfers to Parent.** The piecemeal transfers of assets over a period of three years in contemplation of the transfer of all of the assets of a subsidiary, to a parent, does not qualify as an occasional sale under section 6006.5. The fact that the parent has the authority to take possession of the assets does not support a conclusion that only one sale has taken place. 2/10/71.

395.2560 **Used Equipment.** The transfer of used equipment at its depreciated book value to a wholly owned subsidiary is not exempt as an occasional sale, unless it is a transfer of all or substantially all of the property held or used by the transferor in an activity requiring the holding of a seller's permit. If the parent corporation purchased the equipment tax paid, no tax liability is incurred by the loan or rental of the equipment to the subsidiary. 5/16/55.

395.2610 **Vehicle Transfers to a Subsidiary by a DMV Licensed Dealer.** A dealer licensed by the Department of Motor Vehicles (DMV) transferred tow trucks to a corporate subsidiary in exchange for first issue stock and the assumption of liabilities. The transfer did not include substantially all of the dealer's assets. The transaction was subject to sales tax. The occasional sale exemption provided in section 6367, or the exemption in section 6281, do not apply because the dealer did not transfer substantially all of its assets. The exclusion provided for transfers to commencing corporations solely for first issue stock is not applicable because the subsidiary assumed liabilities.

The sales tax, rather than use tax, applies (Regulation 1595(b)(4)) because the dealer was licensed by DMV. 2/8/94.