STATE BOARD OF EQUALIZATION

M e m o r a n d u m

To: Mr. John Gibbs
Out-of-State Sacramento
District Office - OH

Date: October 18, 1993

From: Thomas Cooke, Tax Counsel
Legal Division – MIC:82

Subject: **LIMITED LIABILITY COMPANIES**

The Legal Division has received your memorandum dated August 18, 1993 in which you state that some states have authorized a form of company ownership called limited liability companies. You also state that at least four states have created this type of entity and you ask if the Board should treat these entities as corporations or limited partnerships.

The following statement appears in Commercial Clearance House, State Tax Reporter, Texas, § 5-013:

> "Effective August 26, 1991, Texas authorizes the creation of limited liability companies. A limited liability company is a business entity that shares characteristics of both partnerships and corporations. Like a partnership, a limited liability company is a pass-through entity in which the profits and losses are passed through to its members. However, unlike a limited partnership in which the individual partners are personally liable for amounts up to and including the amount of their contributions to the partnership or a general partnership in which all members are liable for the partnership obligations, members of a limited liability company incur no personal liability. The characteristics of a limited liability company are also similar to those of a 'S' corporation, but limited liability companies are not subject to the many restrictions placed on 'S' corporations, such as the limitations on the number and types of shareholders, the allowable classes of stock, and the flow-through of losses ….
>
> "For federal purposes, for a limited liability company to be treated as a partnership it must have more partnership characteristics than corporate characteristics. Under federal Regulation 301.7701-2, an association may avoid

classification as 'an association taxable as a corporation' if it lacks at least two of the following four corporate characteristics: (1) continuity of life, (2) centralization of management, (3) limited liability, and (4) free transferability of interests. In Rev. Rul. 88-76, the IRS classified a Wyoming limited liability company as a partnership for federal income tax purposes. The IRS has also issued letter rulings determining that specific limited liability companies organized in Florida (Ltr. Ruls. 8937010 and 9010027) and Utah (Ltr. Rul. 9219022) will also be treated as partnerships for federal income tax purposes even if they are treated as corporations by the state in which they are organized."

Among the states which permit the formation of limited liability companies are Colorado, Florida, Kansas, Nevada, Texas, Utah, Virginia and Wyoming.

California has not recognized, or regulated, the concept of a limited liability company. A bill to permit the formation of limited liability companies in California was introduced in the California Legislature but was not passed.

A limited liability company formed under the laws of another state is a "person" within the meaning of Revenue and Taxation Code section 6005 and will be responsible for California Sales and Use Tax and is required to register as a "seller". We recommend that any permit issued to a limited liability company clearly indicate that the entity is not a corporation. It is our recommendation that the Board's records note that the entity as “(name), a (State) limited liability company.”

With respect to collections, we have been unable to discover any California legislation or case law which either permits or prohibits personal liability of a limited liability company's members for the debts of the entity. Revenue and Taxation Code section 6829 which, in some circumstances, imposes liability on corporate officers for the tax liability of a corporation is inapplicable to limited liability companies. Since California's Sales and Use Tax Law does not mention limited liability companies, in the absence of any direction from California courts or the Legislature, there is no authority to impose any tax liability accruing to a limited liability company on the company's members.

TJC:plh
LimLiab.gib

cc: Mr. Gary Jugum - MIC:82
Mr. James Speed - MIC:47
Mr. Glenn Bystrom - MIC:49
Ms. Sue Coty - MIC:46
Mr. Gordon Adelman - MIC:82

STATE OF CALIFORNIA

415.0110

STATE BOARD OF EQUALIZATION

M e m o r a n d u m

To: Legal Division – MIC:82

Date: August 18, 1993

From: John Gibbs
Out of State District

Subject: Limited Liability Companies

Some states have authorized a form of company ownership called limited liability companies. We have run across this in four states at this point and are not sure if we should treat them as corporations or a form of limited partnership. Attached is a copy of a certificate from Texas.

I was wondering if you have any information on this issue and could provide us with some guidance.

STATE BOARD OF EQUALIZATION

The State of Texas

SECRETARY OF STATE

CERTIFICATE OF ORGANIZATION
OF

X----------

The undersigned, as secretary of State of Texas, herby certifies that the attached Articles of Organization for the above named company have been received in this office and have been found to conform to law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the Secretary by law, hereby issues this Certificate of Organization.

Issuance of this Certificate of Organization does not authorize the use of a company name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated December 30, 1992

Effective January 1, 1993 at 12:00 a.m.

THE STATE OF TEXAS

John Hannah Jr.
Secretary of State

STATE BOARD OF EQUALIZATION

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of December, 1992. The Articles of Organization will become effective on January 1, 1993 at 12:00 a.m. in accordance with the provisions of Article 10.03 of the Texas Business Corporation Act.

Gerald A. O'Brien, Organizer
P.O. Box 3646
Houston, Texas 77253-3646

STATE BOARD OF EQUALIZATION

ARTICLES OF ORGANIZATION

OF

X----------

ARTICLE ONE

The name of the limited liability company is X----------.

ARTICLE TWO

The period of duration of the Company shall be a maximum of thirty (30) years from the date of the filing of these Articles of Organization with the Secretary of State of the State of Texas or until termination of the Company in accordance with the Regulations of the Company.

ARTICLE THREE

The purpose for which the Company is organized is the transaction of any and all lawful business for which limited liability companies may be organized under the Texas Limited Liability Company Act (the "Act").

ARTICLE FOUR

The address of the principal place of business of the Company in the State of Texas is X----------, Houston, Texas and the name and address of its registered agent in the state is X----------, Houston, Texas.

ARTICLE FIVE

The management of the Company is reserved to the members, and the names addresses of the members are as follows:

Name	Address
X----------	X----------
X----------	X----------