

M e m o r a n d u m**185.0013**

To: Pasadena – District Principal Auditor

June 23, 1978

From: Tax Counsel (HLC) - Headquarters

Subject: U--- F--- Corporation

SY -- XX XXXXXX

Your memorandum dated April 27, 1978, and addressed to the Principal Tax Auditor has been referred to the undersigned for reply. You inquire as to the tax consequence of a sale of assets pursuant to a court order.

On May XX, 19XX, the United States District Court, Central District of California issued a final judgment in an anti-trust suit to which taxpayer consented. This consent decree ordered taxpayer to divest itself of certain facilities and business activities within 24 months. If the divestiture was not accomplished within 24 months taxpayer was required to place control of the property in a Trustee who would sell the property subject to approval of the Government. Taxpayer retained the right to object to the court to the terms and conditions of the sale.

On July XX, 19XX, because taxpayer had failed to sell the property, the court ordered taxpayer to irrevocably convey the property to S--- M--- Group as Trustee. The Trustee was granted full authority to dispose of the property subject to the supervision of the court. The Trustee was directed to sell the property within one year and to deliver the proceeds to taxpayer. Taxpayer retained the right to object to the court to the details of any contemplated sale. Taxpayer was to continue the operation of the property subject to the Trustee's review.

The property was ultimately sold to C--- I---, Inc., an Arkansas corporation. The sale was approved by the court. The proceeds of the sale were transmitted by the Trustee to C--- N.A. in reduction of taxpayer's indebtedness to C---. In a letter dated April 24, 1978, taxpayer inquired whether sales tax is due on this transfer and if so the amount and the responsible party.

The issue here is the status of the court-appointed Trustee. Clearly it is not the same status as held by a court-appointed trustee in a bankruptcy case. The bankruptcy trustee has status and powers as defined by statute in the Bankruptcy Act. The bankruptcy trustee is trustee primarily for the creditors rather than for the bankrupt owner. The Trustee in the instant case is in effect a sales agent or broker for taxpayer despite the facts that the court appointed the Trustee and that taxpayer conveyed the property to the Trustee. All tangible benefits of the final sale accrued to taxpayer. But for the fact that taxpayer did not sell the property itself during the period ordered, the sale would have been by taxpayer in form as well as in substance. The substance of the

matter is that the Trustee was appointed by the court to further its order that taxpayer sell the property in question. The term "Trustee" is in this sense a misnomer. Inasmuch as taxpayer was in the business of selling tangible personal property, the sale here of fixtures and equipment used in an activity requiring the holding of a seller's permit is subject to tax. Inventory would of course be considered to have been sold for resale. Business Taxes Law Guide Annotations under 185.000 expound the theory that, where a broker has the power to transfer title to goods held by the broker, the broker is the retailer. Here, nominally at least, the Trustee holds title to the property and has the power to pass title. Actually, however, the sale was subject to approval of the court and taxpayer had the right to present objections to the court. Therefore, the Trustee did not have the unencumbered power to pass title. I interpret the relationship to be that the Trustee was the agent of taxpayer for purposes of selling the property subject to the approval of the court. Taxpayer is therefore liable for tax on the sale of those assets which are tangible personal property other than inventory.

HLC/at

cc: Mr. Donald F. Brady