

**STATE BOARD OF EQUALIZATION**

LEGAL DIVISION - MIC 82
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
Tele: (916) 324-2637
FAX: (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

BRAD SHERMAN
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

May 26, 1995

BURTON W. OLIVER
Executive Director

Mr. R--- W. F---
Attorney at Law
XX --- --- Avenue, Suite XXX
---, CA XXXXX-XXXX

Re: T--- T--- & L--- A---
SY -- XX-XXXXXX

Dear Mr. F---:

This is in response to your letter dated March 6, 1995 requesting our opinion on whether the transfer of furniture, furnishings and equipment ("FF&E") in conjunction with the sale of real property is exempt from tax as an occasional sale. You state:

"T--- [T--- and L--- A--- (hereafter 'T---')] is a financial institution, the primary business of which is real estate secured financing. Occasionally, T--- obtains title to certain real property through foreclosure. Thereafter, T--- sells the real property to recover as much of the amount loaned against the real property as possible.

"In this case, T--- obtained title to the subject real property [located at XXXX W. --- Highway, ---, California and commonly known as C---, The G--- H---, Inc.] which, at the time, was an operating hotel and restaurant, and which contained certain furniture, furnishings and equipment related to the hotel and restaurant.

"Along with the transfer of the subject real property to the current owner, T--- also transferred title to the furniture, furnishings and equipment (hereafter referred to collectively as 'FF&E')...."

Discussion

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) A retail sale means a sale for any purpose other than for resale in the regular course of business. (Rev. & Tax. Code § 6007.) When sales tax does not apply, use tax is imposed on the sales price of property purchased from a retailer for the storage, use or other consumption in California. (Rev. & Tax. Code §§ 6201, 6401.) Thus, tax applies to T---'s sale of the FF&E to its customer inside this state unless an exemption to this sale otherwise applies.

Revenue and Taxation Code section 6367 provides an exemption from sales tax for the occasional sale of tangible personal property other than vehicles, vessels, or aircraft. Revenue and Taxation Code section 6006.5(a) defines an occasional sale as a sale of property not held or used by a seller in the course of activities for which the seller is required to hold a seller's permit, provided the sale is not one of a series of sales sufficient in number, scope, and character to constitute an activity requiring the holding of a seller's permit. Title 18, California Code of Regulations (hereafter "Regulation"), section 1595(a)(1) further interprets Revenue and Taxation Code section 6006.5 and provides that persons making three or more sales for substantial amounts, or a substantial number of sales for relatively small amounts, in any twelve month period, are required to hold a seller's permit.

Our records reflect that T--- is registered as a retailer and holds a California seller's permit for the purpose selling and leasing various types of equipment to its customers. In this case, T--- acquired certain real and tangible personal property (the FF&E) by way of its foreclosure on a hotel and restaurant establishment. T--- thereafter sold the FF&E to a third party along with the transfer of the subject real property. Since T--- is already required to (and presently does) maintain a seller's permit for its equipment sales, tax applies on T---'s sale of the FF&E to its customer.

You assert that Ontario Community Foundations, Inc. v. State Board of Equalization (1984) 35 Cal.3d 811 applies to T---'s situation. Ontario involved the sale of hospital assets including food service facilities, supply departments, and pharmacies which were required to maintain seller's permits. The court found that no tax was due on the sale of the medical and nursing equipment since each hospital was not required to hold a seller's permit in rendering medical and nursing services and that the sale of this equipment otherwise qualified as an exempt occasional sale. (Id. at p. 815.) Tax did apply, however, to the foundation's sale of the tangible personal property relating to those operations which did require a seller's permit. This rule is set forth in Regulation 1595(a)(3) as follows:

“A person engaged in an activity or activities requiring the holding of a seller's permit or permits may also be engaged in entirely separate endeavors which do not require the holding of a seller's permit or permits. Tax applies to the sale of

tangible personal property held or used in the course of an activity requiring the holding of a seller's permit. Tax does not apply to the sale of property held or used by the seller in the non-selling endeavors which do not require the holding of a permit. For example, a person may own a hardware store at one location and a real estate brokerage business at another location, with no relationship between the two activities except that of common ownership. Under these circumstances, a sale of furniture used in the brokerage business would not be a sale of property held or used in an activity requiring the holding of a seller's permit. A sale of tangible personal property used in the hardware business would be a sale of property held or used in an activity requiring the holding of a seller's permit."

In the present situation, T--- is not selling property from a business it owns that does not require it to hold a seller's permit (e.g., a real estate brokerage business). Instead, T--- holds a seller's permit for the sale and lease of tangible personal property to its customers. In this transaction, T--- acquired FF&E 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, T---'s sale of the FF&E is not exempt as an occasional sale and is subject to tax measured by its fair market value.

Finally, you request the release of the \$10,000.00 certificate of deposit posted by the C--- Corporation (SR -- XX-XXXXXX). A copy of your correspondence was forwarded to the Board's Torrance District Office to address the release of these funds.

If you have any further questions regarding the application of tax on T---'s sale of the FF&E, please write again. If you have any questions regarding the release of C--- Corporation's bond, please write the Torrance District Office at 680 W. Knox Street, Suite 200, P.O. Box T, Torrance, California 90507-0270.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:plh

cc: --- --- District Administrator - ---S