State of California

Board of Equalization
Legal Division (MIC:82)

M e m o r a n d u m

395.0835

To: G. M. Swan
Van Nuys District

Date: December 10, 1986

From: David H. Levine
Tax Counsel

Subject: H--- F---
No Permit

This is in response to your memo to Tax Counsel Les Sorensen dated October 24, 1986. You ask whether sales or use tax applies to the sale of limited partnership interests in a racehorse.

From the Offering Circular submitted with your inquiry, it appears that the limited partnership has not yet purchased the horse. If this is true and the partnership owns no other tangible personal property, then sales of limited partnership interests are not subject to sales or use tax since transfers of those interests involve no transfer of tangible personal property. For the remainder of this opinion, I assume that the partnership owns tangible personal property at the time of the transfer of limited partnership interests.

Shares of a corporation are intangible representations of ownership in that corporation. (Cf. Rev. & Tax. Code §§ 6006.5(b), 6281 (for purposes of these sections, shareholders are regarded as having the ultimate ownership of the property of the corporation).) thus, the transfer of shares in a corporation is not subject to sales or use tax.

Limited partnership interests are similar to shares of a corporation. (see generally Corporations Code §§ 15501 et seq., 15611 et seq.) A limited partner generally is not liable for any obligation of a limited partnership unless he is named as a general partner or he particpates in the control of the business. (Corporations Code § 15632(a).) A limited partner has certain rights, such as a right to reports and other information. (Corporations Code § 15634.) But a limited partner has not interest in specific partnership property and has not right to receive property other than money upon any distribution unless otherwise specified in the partnership agreement (here, there is no specification otherwise). (Corporations Code §§ 15636, 15671.)

Based on the above considerations, we consider the interests of the H--- F--- Associates V limited partners to be intangible personal property. (Accord, Van Arsdale v. Claxton (S.D. Cal. 1975) 391 F.Supp. 538 (limited partnership interests are considered to be within the definition of the term securities under both Federal and California Security Acts).) Therefore, the sale of these limited partnership interests are not subject to sales or use tax provided that the limited partner whose interest is sold has not taken any action which destroys his status as a limited partner (making him, in effect, a general partner).

If you have further questions, feel free to write us again.

DHL:ss

bc: Don Hennessy
Les Sorensen