STATE BOARD OF EQUALIZATION

June 23, 1953

F---, V--- & R---
XXXX --- Boulevard
--- --- X, California

Your letter of April 20

Attention: Mr. S--- R. R---

Gentlemen:

You request our advice as to the application of the California sales tax to the following facts:

One of your clients currently operates a manufacturing business and in connection therewith sells and distributes the products of that business. The assets of the manufacturing sales and distribution business have a value of approximately $10,000.00, including certain tangible personal property. The owner proposes to incorporate the sales and distribution activities and to transfer certain of the assets to the corporation in return for stock. These assets transferred will be all of the assets reasonably attributable to the sales and distribution activities of the business. After the transfer, your client will be a majority stockholder and will own substantially all of the outstanding stock of the new corporation.

You ask whether this transfer will meet the requirements under Ruling 81 and not be subject to tax.

Ruling 81 and section 6006.5(b) upon which the ruling is based, provide that a transfer of all or substantially all of the property held or used in the course of an activity for which a seller's permit is required is not subject to tax if, after the transfer, the real or ultimate ownership of the property is substantially unchanged. Therefore, a transfer of a part of the property or merely one segment of the business does not meet the requirement of the statute nor Ruling 81.

We might also point out that the statute and Ruling 81 both require that after such a transfer, the real or ultimate ownership of the property shall be substantially similar to that which existed before the transfer. We have consistently interpreted this as requiring at least 80% similarity of ownership. We cannot determine from your letter whether the transfer in question would meet this portion of the requirement for tax exemption under Ruling 81.

The transaction which you set out in your letter may not be subject to tax on another theory. If your client transferred the assets in question to a commencing corporation solely in exchange for stock and the corporation did not assume any indebtedness or other liabilities of the transferor, we would not consider the transaction as a taxable sale for the reason that the stock had no value other than that given to it by reason of the transfer of the property involved.

If you have any further questions with regards to this matter, please feel free to write us.

Very truly yours,

John H. Murray
Associate Tax Counsel

JHM:tj

cc: --- --- - Auditing