

Sacramento, California  
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Mr. W. E. Williams  
E.H. Stetson (WWM)

### FACTS

The contract in question is entitled a Plan of Partial Liquidation and Distribution of the . . . .  
Briefly, facts are essentially that X corporation had several branch offices selling and servicing automobiles. Pursuant to the policy of the manufacturer of the automobiles to decentralize its dealers it was decided to create separate entities at each branch, else all branches would lose their franchise. Accordingly, this contract was entered into whereby two of the three shareholders each turned their one-third interest as shareholders over to corporation in exchange for one-third of the assets of the corporation.

It appears that the corporation was not dissolved because, it was said at the hearing, the remaining stockholder would have to pay a large capital gain income tax if this were done.

The issue essentially seems to be--was the transfer of the property to one of the former shareholders for his shares a taxable transaction, or exempt as one in the nature of a ratable distribution of the assets in kind upon the "liquidation" of a corporation?

### OPINION

It is our opinion that this transaction should be regarded as taxable. This opinion is primarily based on our memo of August 14, 1951, expressed to . . . . where we stated that the distribution of furniture and fixtures of a corporation to one of its stockholders in return for the stock held in the corporation by that stockholder which was to be retired by the corporation pursuant to its plan to reduce its stated capital, constituted a taxable transaction. (See accompanying . . . . ) Under the present set of facts, we, in addition have been shown no positive evidence that the stock turned in was retired, and, accordingly there appears to be even less reason for treating this transaction as exempt.

Pursuant to the opinion, mentioned above, it appears that, in any event, we have not construed the exemptions provided for in Sales Tax General Bulletins 45-1 and 48-8 as applicable unless the ratable distribution in kind is part of a plan calling for the entire dissolution of the corporation.

This seems to be entirely correct in view of the fact that Sales Tax General Bulletin of January 16, 1945, states that the tax does not apply with respect to a transaction in which a corporation

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dissolves and distributes the entire assets to its stockholders in return for the delivery of the stock of the corporation by the stockholders to the corporation.

It is also my opinion that we should not unduly broaden the exemptions provided for in these bulletins, as they appear to be in the nature of implied exemptions not expressly provided for under the Sales and Use Tax Law.

WWM:ja