

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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(916) 445-3237

August 29, 1980

Mr. R--- J. V---
Attorney at Law
--- --- --- Building, XXXth Floor
XXXXX --- --- Boulevard
--- ---, CA 90067

Dear Mr. V---:

RE: M--- P--- and T--- F---,
A California Charitable Corporation
SX -- XX XXXXXXX

Your letter of August 4, 1980 to Mr. Gary Jugum has been referred to the undersigned for reply. You have requested an opinion from this office concerning the following transaction.

Background

The M--- P--- and T--- F--- ("F---") is a charitable and [exempt---] corporation. It operates an acute hospital, skilled nursing facilities, long-term care facilities, retirement care facilities, and two outpatient clinics in Southern California. Social services are also provided. As a result of its hospital operations, the F--- holds a Seller's Permit.

Under the terms of the Will of F--- G---, a limited partner in the [S], the business of the [S] was devised and bequeathed to the F---. Mrs. G--- died in July of 1976. In April of 1979, the F--- was advised by the executor of the estate of F--- G--- that the F--- could anticipate an early distribution of the [S] assets. At that time, the Board of Trustees determined that the [S] must be sold.

An agreement of sale was entered into between the F--- and [W], on July 2 and 3, 1980, respectively. Under the terms of that agreement of sale, a closing is now scheduled for September 1, 1980. A Decree of Distribution will issue from the Probate Court on the day provided for closing of the sale. On that day, the F--- will receive, and, in turn will deliver to the title

company for recordation, the Decree of Distribution, together with a deed from the F--- in favor of [W]. At that time, the assets to be sold will be transferred, and such transfers will be evidenced by deeds, bills of sale, transfer of pink slips, and assignments of certain leases.

Under the terms of the Sales' Agreement, the total purchase price will be \$30,075,130.00 and the purchase price is tentatively allocated as follows:

Land and buildings	\$20,930,000.00
Equipment	9,145,130.00

Question Presented

You wish to know whether the proposed sale of equipment in conjunction with the sale of [S] is an occasional sale under the Sales and Use Tax Law.

Analysis

An "occasional sale" is defined in Revenue and Taxation Code Section 6006.5 as:

"(a) A sale of property not held or used by a seller in the course of activities for which he is required to hold a seller's permit or permits if the activities were conducted in this state, provided such sale is not one of a series of sales sufficient in number, scope and character to constitute an activity for which he is required to hold a seller's permit or would be required to hold a seller's permit if the activity were conducted in this state, ..."

Section 6367 provides that:

"There are exempted from the taxes imposed by this part the gross receipts from occasional sales of tangible personal property and the storage, use, or other consumption in this state of tangible personal property, the transfer of which to the purchaser is an occasional sale...."

We are of the opinion that the sale of [S] by F---, which will occur after the distribution of the [S] to the F---, by virtue of the Final Decree of Distribution, is an exempt occasional sale under Revenue and Taxation Code Section 6367. This is true notwithstanding the fact that the F--- does operate a business which requires the holding of seller's permit, the hospital, since the assets of [S] which will be distributed to the F--- and then sold the same day are not held by the F--- "in the course of activities for which (it) is required to hold a seller's permit." The F--- has never engaged and will never engage in any business of the [S] which would require it to hold a seller's permit since it will only own the [S] for a short time on the day of transfer. In addition, it is not regularly in the business of making sales of equipment, the type of property it is selling in this instance. As such, tax will not apply to the F---'s sale of tangible personal property which is a part of the sale of the [S].

Mr. Robert J. Vallier

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395.0130

If you have further questions concerning this matter, please write this office again.

Very truly yours,

Mary C. Armstrong
Staff Counsel

MCA:ba