



STATE BOARD OF EQUALIZATION

March 1, 1966

Mr. W--- P. C---
Attorney at Law
XXX S. --- St., Suite XXX
--- ---, California XXXXX

Dear Mr. C---:

Re: E--- J. B---
E. J. B. E---
SR -- XX XXXXXX
SN -- XX XXXXXX

This is to inform you of our recommendation in the matter of the petitions for Redetermination of the above-named taxpayer. It is our recommendation that tax was properly assessed on the sale of the taxpayer's business assets to the limited partnership but that it was improperly assessed on the sale by the limited partnership to the commencing corporation.

A limited partner is a separate person under the Sales and Use Tax Law, (Revenue and Taxation Code Section 6005). The sale by an individual to a limited partnership in consideration of an assumption by the partnership of the business indebtedness constitutes a sale, and since in this case the sale was at retail, it is subject to the sales tax. The auditor properly measured the tax by a formula method of prorating the liability assumed by the amount the taxable tangible personal property bore to the total assets.

We have examined, in some detail, the records of the Corporations Commissioner concerning the issuance of stock to members of the limited partnership and to the group of doctors. The permit requires the sale and issuance of stock to all the owners of the limited partnership in consideration of the business assets prior to any sale of stock for cash. The sale to the partnership occurred on December 16, 1961, while the sale of stock to the doctors did not occur until January 8, 1962. This being the case, the sale of business assets comes within Section 6006(b) of the Revenue and Taxation Code [now see §6006.5(b)], and is an exempt occasional sale. It qualifies in that substantially all of the business assets were sold while the ultimate ownership of the assets remained substantially the same. The fact that the sale and issuance of stock to the two groups occurred at different times probably is not sufficient to establish the exemption by itself. The important fact is that the transaction took place in this order because of the requirement of the Corporations Commissioner, and this was a good business reason for it.

You are entitled to a Board hearing on your petition for Redetermination of E. J. B. E---, E--- J. B--- as sole proprietor. If you disagree with our recommendations and desire a hearing before the Board, it will be granted on request. If you no longer desire the hearing, please sign and return two of the enclosed waiver of Board hearing forms. The third copy is for your file.

Very truly yours,

John H. Knowles
Associate Tax Counsel

JHK:md
Enclosure