

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6493

November 29, 1989

Mr. G--- E. R---
Law Offices of R--- and S---
XXXX --- Street
---, California XXXXX

Re: Occasional Sale -- Commencing Corporation

Dear Mr. R---:

In your October 2, 1989 letter to Mr. Les Sorensen, Senior Tax Counsel, you write:

“I represent a client who is in the process of transferring certain assets to a corporation solely in exchange for its stock. As I understand the Regulations at §1595, the transfer of assets (regardless of whether they are substantially all or not) to a ‘commencing’ corporation in exchange solely for stock will not trigger a sales tax liability. That much is clear. What is not so clear is the definition of a ‘commencing’ corporation. I have reviewed the Rulings and do not have a clear answer.

“In my situation the transferee corporation has been around for a number of years, but it has never been used for any purpose, and stock has never been issued; nor have any assets been transferred to the corporation. The corporation was set up by my client some years ago with another purpose in mind that never developed. It is a shell corporation which has been maintained in good standing with the Franchise Tax Board for several years, but has never conducted any business. This contemplated transfer would be the first issue of stock in that corporation, and in my opinion, it would satisfy the requirements of a ‘commencing’ corporation.

“However, in view of the potential for tax liability, I would appreciate your review and opinion on the matter. Please call if you have any questions, or if additional facts are needed.”

OPINION

The Board's Sales and Use Tax Regulation 1595(b)(4) provides as follows:

“CONTRIBUTION TO COMMENCING CORPORATION OR COMMENCING PARTNERSHIP. Tax does not apply to a transfer of property to a commencing corporation or commencing partnership in exchange solely for first issue stock of the commencing corporation or an interest in the commencing partnership. Tax does apply, however, if the transferor receives consideration such as cash, notes, or an assumption of indebtedness, and the transfer does not otherwise qualify for exemption. The tax is measured by the amount of such consideration attributable to the tangible personal property transferred.”

Based on the facts you have presented, we agree with your opinion that the transferee corporation is a commencing corporation within the meaning of Regulation 1595(b)(4) because it has not previously issued any stock. We agree that the mere recordation of its corporate existence with the Secretary of State and the Franchise Tax Board does not in and of itself disqualify the corporation as a commencing corporation for purposes of this Regulation. Therefore, no sales or use tax will apply when your client transfers assets to this corporation solely in exchange for the corporation's first issue of stock.

Please feel free to contact me if you have further questions.

Sincerely,

John Abbott
Senior Tax Counsel

JA:jb

bc: --- --- District Administrator