

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-3723

July 18, 1989

Mr. R--- M. J---

[H]

Lawyers

XXXXX --- Boulevard

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Dear Mr. J---:

This is in response to your letter of June 19, 1989. We apologize for the extended delay in our reply.

You have sought our opinion as to the sales and use tax consequence of the following described transactions:

[G], Inc., a California corporation (“[G]”) and [P], Inc., a Delaware corporation (“[P]”) propose to form a general partnership (the “Partnership”) pursuant to California law. [G] will contribute to the Partnership a relatively small amount of cash (currently contemplated to be \$990); [P] will contribute 1/99 of [G]’s contribution (currently contemplated to be \$10). [P] will then purchase from [G] a 1% interest in certain real estate (the “Real Estate”), immediately following which [G] will contribute 100% of their combined interests in the Real Estate to the Partnership.

Thus, immediately following the transactions described above, (a) the assets of the Partnership will consist of cash and the Real Estate, (b) [G] will have a 99% interest in the Partnership, and (c) [P] will have a 1% interest in the Partnership.

[G] will then contribute to the Partnership certain assets (the “Wine Business”). As consideration for the transfer of the Wine Business to the Partnership, the Partnership will issue to [G] an additional partnership interest, which will bring [G]’s interest in the partnership to in excess of 99%. The Partnership will also assume certain liabilities and obligations of [G].

The Wine Business comprises 80% or more wine or the tangible personal property held or used by [G].

Immediately following the transfer of the Wine Business to the Partnership, [P] will purchase, for cash, an interest in the Partnership from [G] to bring [P]' Partnership interest up to 50%.

You have represented that these transactions were not structured solely to avoid California sales and use tax.

We hereby concur in your analysis and conclusions that neither sales tax nor use tax applies to (1) the transfer of the Real Estate by [G] to [P], (2) the transfer by [G] and [P] of the Real Estate to the Partnership, and (3) the transfer of the Partnership Interest by [G] to [P].

The most critical point of our analysis is that our Regulation 1595(b)(2) applies to the transfer of the tangible personal property from [G] to the Partnership. Since [G] holds a seller's permit, the transfer must meet the 80% / 80% requirements of the regulation. The transfer in question meets the test. Each step of the transaction is properly analyzed independently of all other steps. It is inappropriate to recharacterize the transaction for sales and use tax purposes, where the business purpose for the transaction is not sales and use tax avoidance only.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

GJJ:sr