

M e m o r a n d u m**395.2190**

To: Mr. Glenn A. Bystrom

Date: December 19, 1990

From: Ronald L. Dick

Subject: ---

You asked that I review correspondence from Mr. A, regarding a request for reconsideration by ---, of a Notice of Determination issued against that entity. Mr. A provided the following background facts:

“X is a wholly-owned subsidiary of ---. X is a joint venturer (partner) in numerous joint venture arrangements regarding various joint venture projects.

“In 1983, X transferred 49% of its interest in such joint transfers to ---. These transfers were accomplished in accordance with the provisions of amendments to the joint venture agreements which specifically contemplated uninterrupted continuance of the joint ventures pursuant to Section 15031 of the California Corporations Code.

“For example, the joint venture agreement for B was amended on March 1, 1983, to reflect the agreement of all parties to the transfer of 49% joint venture interest from X to ---. Prior to said transfer, X owned a 60% interest in the joint venture, and subsequent to the amendment and transfer, X retained an 11% interest. The transfer was specifically limited to the 49% interest to avoid a deemed dissolution of the joint venture. It should be noted that --- owned 100% of the outstanding stock of X.

“At the time of the transfer, journal entries were prepared to reflect the transaction. Upon audit by the Board of Equalization, the auditor concluded the transfer constituted a sale of tangible personal property and not a transfer of an intangible interest in the joint venture.”

The Board has taken the position that a sale of a partner's share of a partnership is a sale of tangible personal property. (Bus. Tax. Law Guide Annot. 395.0800.) On the other hand, the Board has also taken the position that when a partnership agreement contains a provision of the type described in Corporations Code section 15031 (7), a transfer of a partnership interest does not occasion a change in ownership. The “person” who owns the tangible personal property, the

partnership, remains the same. Corporations Code section 15031 (7) provides that a dissolution of a partnership is caused:

“By withdrawal of a partner or admission of a new partner unless otherwise provided in an agreement in writing signed by all of the partners, including any such withdrawing partner or any such newly admitted partner, before such withdrawal or admission; provided that in the case of a newly admitted partner he or she may become a party to any such pre-existing agreement by signing the same upon such admission.”

In the X case, Mr. A has sent a copy of an Amendment To Joint Venture Agreement, dated March 1, 1983, whereby X assigns and transfers 49% of its share in the Joint Venture to ---.

Paragraph 5. of the Amendment provides:

“This Assignment of a partnership interest does not constitute the transfer or sale of tangible personal or real property since all equipment, cash, material or other tangible personal or real property of this Joint Venture is held by the Joint Venture Partnership and there has been no transfer or sale from that Joint Venture partnership.”

I was unable to find any evidence that there was an agreement in writing and signed by all parties before the March 1, 1983 Amendment which admitted --- to the Joint Venture. Therefore, notwithstanding the declaration in paragraph 5. of the Amendment that there is no sale of tangible personal property, if there was no pre-existing agreement pursuant to Corporation Code Section 15031 (7) providing for continued existence, the sale of the 49% which resulted in the admission of the new joint venturer, ---, also resulted in a dissolution of the Joint Venture and a resulting sale of the underlying assets.

RLD:sr