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June 21, 1996

E. L. Sorensen, Jr.
 Executive Director

Mr. R--- G---M---
 M---, M--- & P---
 XXX West ---, Suite XXX
 --- ---, California XXXXX-XXXX

Re: Unidentified Taxpayer;
 Occasional Sales

Dear Mr. M---:

This is in response to your March 22, 1996 letter to Assistant Chief Counsel Gary J. Jugum requesting a ruling on the application of tax to a proposed partnership distribution and transfer of assets to a limited liability company ("LLC") by hypothetical taxpayers. I initially note that the Board staff does not issue rulings. Revenue and Taxation Code section 6596 sets forth the circumstances under which a taxpayer may be relieved of liability for taxes when reasonably relying on a written response to a written request for an opinion. In order to come within the provisions of section 6596, all relevant facts, including the identity of the taxpayer, must be disclosed. This opinion does not come within section 6596 because you have not identified your client. You should provide us with the identity of your client (as well as all relevant facts) in your initial letter to us if you wish an opinion letter coming within the provisions of section 6596.

You previously requested an opinion on this transaction in your October 3, 1995 letter to us. We responded to this request in our letter to you dated December 21, 1995. We understand that the facts surrounding your present request only differ from your previous request in three ways. First, the assets distributed to the two partners as a result of the complete liquidation of the partnership will not be subject to any liabilities (i.e., the partners would not assume any liabilities of the partnership). Second, you clarify that the corporation will receive approximately 33 percent of the assets of the partnership and that the gift trust would receive approximately 67 percent.¹ Third, you state that the gift trust will only contribute the assets it receives from the dissolved partnership to the LLC. We understand and assume that all other facts regarding your clients and the proposed transactions are the same as previously set forth in your October 3, 1995 letter to us. (If this assumption is incorrect, our opinion below would be

¹ We assume that net result of this distribution is wholly consistent with, and pursuant to, the liquidation provisions of the partnership agreement. That is, we assume that the corporation's receipt of 33 percent (and the gift trust's receipt of 67 percent) of the partnership's assets is the result of the partnership agreement and that these two partners are not receiving a distribution that they would not otherwise receive under the terms of that agreement.

different.) In that regard, we incorporate by reference those background facts and facts regarding the proposed transaction as set forth in pages one through four of our December 21, 1995 letter to you.

You ask us to address the same questions previously posed to us in your October 3, 1995 letter as they apply to the revised transaction. As we noted in our December 21, 1995 letter to you, some tangible personal property is ultimately being transferred from the partnership to a LLC owned by the gift trust and Mr. and Mrs. Taxpayer by way of multiple transactions between the several parties. These types of transactions require a two-tier analysis. First, each step in the series of transactions must be analyzed for the purpose of ascertaining if there is a taxable transaction between two parties. Second, the transactions must be collectively analyzed for the purpose of determining whether, under the California Sales and Use Tax Law, the intervening steps of the transaction should be disregarded and the transactions should be analyzed only on a before and after basis, with all intervening steps of the transaction disregarded for sales and use tax purposes. (See, e.g., Business Taxes Law Guide Annot. 395.1840 (3/1/66; 7/28/86).) That is, the individual series of transactions between the parties will be disregarded if they are undertaken solely for the purpose of avoiding or altering the California sales or use tax liabilities of the parties. With that in mind, I will first discuss whether tax applies to each of the individual transactions between the parties.

A. Individual Transactions

“[1.] [W]ould ... the proposed complete liquidation of the Partnership ... qualify for the occasional sale exemption under Revenue and Taxation Code § 6367 and § 6006.5 ... [such that] no sales tax would be due as a result of the liquidation[?]”

We previously concluded that tax applied to the partnership's distribution of its assets pursuant to a complete liquidation since each of the partners would assume some of the partnership's liabilities. In that regard, we incorporate by reference our analysis regarding the application of tax to the distribution of a partnership's assets as set forth in pages four through six of our December 21, 1995 letter to you.

You now state that the assets distributed to the partners as a result of the complete liquidation of the partnership will not be subject to any liabilities and that the partners will not assume any liabilities of the partnership. That is, neither partner will provide consideration to the partnership in exchange for the distribution of the partnership's assets. You also state that the assets of the partnership will be distributed to the partners in the same ratio as each partner's interest in the partnership. Under these facts and subject to the analysis contained in our December 21, 1995 letter, tax does not apply to the partnership's complete liquidation of assets to its partners.

“[2.] [W]ould the proposed transfer by the Gift Trust to the newly formed LLC ... qualify for the occasional sale exemption under Revenue and Taxation

Code § 6367 and § 6006.5 ... [such that] no sales tax would be due as a result of the transfer of assets to the LLC[?]"

We previously assumed that the gift trust transferred 100 percent of its total property (real and personal) to the LLC. On that basis, we concluded that tax did not apply to that transfer. You now state that the gift trust will only transfer those assets received from the dissolved partnership to the LLC. In particular, you state that "the gift trust's other assets, which consist of cash and other investments, will remain in the gift trust and will not be contributed to the LLC." We understand this to mean that the gift trust will not retain title to, or otherwise own, any tangible personal property after the transfer of the assets it acquired from the partnership to the LLC. Under these facts, the gift trust's transfer to the LLC is exempt from tax as an occasional sale since it is transferring at least 80 percent of the tangible personal property it held or used in the course of its selling activities to the LLC, and the gift trust will maintain at least 80 percent ownership of the LLC (i.e., Mr. and Mrs. Taxpayer will only contribute 5 percent of the value of the assets of the LLC such that the gift trust retains a 95 percent ownership) at the conclusion of the transfer.

B. Collective Transaction

We previously concluded that we would not disregard the series of transactions between the partnership, gift trust, and LLC for sales and use tax purposes and not view the series of transactions taken as a whole as a taxable sale of tangible personal property from the partnership to the LLC. In that regard, we incorporate by reference our analysis regarding the proposed "collective transaction" as set forth in pages seven and eight of our December 21, 1995 letter to you.

Under the revised set of facts you provided, we continue to understand that the gift trust will transfer its assets to the LLC in order to be taxed as a partnership and not as a corporation. We regard this transfer as one for a valid business purpose and not for the purpose of avoiding California sales or use tax. We therefore will not disregard the series of transactions between the parties for sales and use tax purposes.

If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Tax Counsel

WLA:rz

cc: --- --- District Administrator - ---