


STATE BOARD OF EQUALIZATION

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 Executive Director

August 1, 1996

Mr. M--- E. M---
 XXXXX --- Boulevard, --- Floor
 --- ---, California XXXXX

Re: N--- O--- R--- P---

Dear Mr. M---:

I have your letter of May 31, 1996 for response. In your letter you requested a "ruling" by the State Board of Equalization on the taxability for California Sales and Use tax purposes of a described transaction. Please note that the legal division may not issue a "ruling," that is solely the province of the Board. We can, however, provide you with a legal opinion as to the application of the law to your proposed transaction. This letter shall serve as that opinion.

In your letter you advised us that N--- O--- R--- P---, a California general partnership ("NORP"), conveyed certain tangible personal property to its wholly owned subsidiary S--- R--- P--- Corporation, a California corporation ("SRPC"). The conveyance was described in the Contribution Agreement as a "contribution to capital." The conveyance was not given in exchange for stock, and SRPC assumed certain liabilities as part of the transaction. You request that we "confirm that those liabilities will be allocated amongst all of the assets transferred and only that portion of the liabilities allocable to tangible personal property is subject to sales tax."¹

While capital contributions are not generally taxable (see BLTG Annots. 395.1520 (1/11/55), 395.1960 (5/25/51) and 495.0090 (4/19/67)), if the transfer is subject to a debt assumed by the transferee, we do not classify the transaction as a contribution to capital, rather there is a taxable sale measured by the assumed liabilities.² Where the property transferred, as in

¹We assume, for purposes of this analysis, that NORP holds a seller's permit under Revenue and Taxation Code section 6066.

²This is true without regard to whether or not the transaction might be regarded as a contribution to capital for income tax purposes.

this case, includes both tangible personal property as well as other property (intangible property such as stock, and/or real property) how do we determine what portion of the consideration is allocable to the taxable sale of tangible personal property? We first determine the value of the tangible personal property conveyed, and divide that amount by the total value of all assets conveyed. We then apply the resulting factor to the total consideration (i.e. total liabilities assumed) paid. The result is the taxable measure.

We do not permit the parties to allocate liabilities among the assets transferred to reduce the tax liability. Hence, if the only liability assumed was a mortgage against real property, we would **not** consider that there was no taxable consideration paid for the tangible personal property component of the sale; rather we would apply the formula outlined above to allocate a portion of the assumed liabilities to the sale of the tangible personal property. Thus, tax will be due on the transaction in question measured by the portion of the liabilities assumed and any other consideration received which is allocable to the tangible personal property component of the property transferred in the transaction, as discussed above.

I hope the foregoing response has been sufficient for your purposes. However, if you have further questions, please write again.

Very truly yours,

John S. Butterfield
Tax Counsel

JSB/cmm