

Memorandum

410.0214

To : Mr. Dennis Fox
Program Planning Manager

Date: July 30, 1997

From : Warren L. Astleford
Senior Tax Counsel

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Subject: G--- E--- C--- Return Consolidation Proposal

This is in response to your June 11, 1997 memorandum to Mr. Gary Jugum asking us to review the proposal by G--- E--- Company ("GEC") and G--- E--- C--- Corporation ("GECC") for the filing of consolidated sales and use tax returns. GEC and GECC request that the Board enter into agreements allowing them to file a single sales and use tax return and tax payment for all of their respective subsidiaries. We understand that GEC has nine subsidiaries while GECC maintains twenty-five separate subsidiaries. You state that each of these subsidiaries is individually registered with the Board and are each separate, stand-alone entities. You provided us with copies of the tentative agreements offered by GEC and GECC for purposes of our review.

Revenue and Taxation Code section 6452 provides that every seller or person liable for sales or use tax is required to file a return with this Agency. The return shall show that person or seller's gross receipts or sales price of property sold during the preceding reporting period. (Rev. & Tax. Code § 6453.) Unless payment is made by electronic transfer, a person or seller required to file a sales and use tax return shall deliver the return together with a remittance of the tax due to the office of the Board. (Rev. & Tax. Code § 6454.)

GEC, GECC and each of their subsidiaries are persons and sellers within the meaning of Revenue and Taxation Code sections 6005 and 6014. Each of these entities maintains separate sales and use tax permits. This means that each of these companies is required to separately file a sales and use tax return with this Agency. GEC and GECC may not file combined or consolidated returns on behalf of their respective subsidiaries.

The rationale for this result is two fold. First, there are no statutory provisions authorizing the combination of returns or the consolidation of filing by separate companies. As noted above, the applicable statutory provisions require each separate company to file its own sales and use tax return. Second, this Agency has never authorized the consolidated filing of returns on behalf of

any group of associated sellers. For example, a certified public accountant may not file a single sales and use tax return on behalf of a group of its clients merely because it represents all the members of that group. This result is unaffected even where each of the sellers in that group is a separate, but related company. There is no difference between an unrelated group of separate sellers and a group of related sellers for purposes of filing requirements under the Sales and Use Tax Law.

The proposed consolidated reporting of taxes by GEC and GECC further creates reporting and verification problems. It would be difficult to determine from a consolidated return as to which subsidiary would be claiming certain deductions, credits, or offsets¹ and whether these deductions, credits or offsets would be against actual sales undertaken by that same entity. Audits of GEC and GECC would also be much larger undertakings. The filing of a consolidated return would mean that a single audit of GEC or GECC would require the audit of all the subsidiaries of those entities at the same time. We further note that the proposed agreements offered by GEC and GECC lack parity. GEC and GECC ask to be a single entity for reporting purposes, but also ask that each subsidiary be a separate entity for purposes of penalties, interest and statute of limitations provisions.

Existing statutory authority requires GEC, GECC and its subsidiaries to each file separate sales and use tax returns. These companies must continue to do so in the absence of express statutory authority to the contrary. For these reasons, GEC and GECC's proposal to file consolidated returns on behalf of their respective subsidiaries may not be accepted by this Agency.

If you have any further questions, please write again.

WLA/cmm

¹These would include, without limitation, tax-paid purchases resold deductions (Reg. 1701), bad debt deductions (Reg. 1642), the partial sales and use tax exemption (Reg. 1525.2, 1525.3), sales for resale (Rev. & Tax. Code § 6007), and sales in interstate commerce (Reg. 1620).