



STATE BOARD OF EQUALIZATION

916-445-6493

March 22, 1988

X-----

X-----

Transfer of property assets as dividend

Dear X-----:

In your January 6, 1988 letter to Mr. Herbert Cohen, Tax Counsel, which was referred to me for reply you write:

“X----- requests a legal opinion as to the sales taxability or non-taxability of the following situation.

“As of October 1, 1987, X----- purchased 100% of the stock of X----- formerly a wholly owned subsidiary of X-----.

“After X----- acquisition of X-----, X----- declared a property dividend of some of its unencumbered fixed assets within and without California, to its parent X-----.

“It would be appreciated, if at your earliest possible convenience, you would advise us of your opinion as to the sales tax liability, if any, we might incur in the declaration and payment of the property divided by X-----.”

Opinion

Our opinion is that X----- transfer of tangible fixed assets in California as a dividend to its parent, X----- is not subject to sales or use tax, assuming no consideration was received by X----- for the dividend. For sales and use tax purposes, a “sale” is defined as the transfer of title or possession of tangible personal property for a consideration. (Revenue and Taxation Code Section 6006(a).) transfers of tangible property between parent and subsidiary corporations certainly constitute sales,

but there must be some consideration received by the entity which transfers the tangible property, such as an assumption of indebtedness.

The following Business Taxes Law Guide annotations (tax counsel opinions) quoted below support our conclusion under the facts you relate. These annotations are:

"495.0725 Dividends in Kind. Transfer of property from a corporation to a sole shareholder which is shown on the books of both entities as a dividend is not a sale unless the corporation declaring the dividend receives consideration for the property transferred. 7/22/76."

"495.0740 Transfer to Stockholder. There is a transfer of property for a consideration, creating a taxable sale, when a corporation transfers equipment to a stockholder in return for his stock which stock is then retired or canceled by the corporation. 8/24/53."

If you have any further questions or comments about this letter, please feel free to contact me.

Sincerely,

John Abbott
Tax Counsel

JA:jb