



---

**STATE BOARD OF EQUALIZATION**

(916) 445-5550

December 12, 1990

Mr. B--- R. B---  
---, --- and --- ---  
XXXX-C --- --- Street  
P.O. Box XXX  
---t, California XXXXX

Re: C--- M. and R--- C. B---  
SR --- XX-XXXXXX

Dear Mr. B---:

Your letter dated November 1, 1990 to our Santa Rosa District Office regarding successor liability for sales tax has been referred to the Legal Division for response. (Your letter was actually addressed to the Franchise Tax Board. Since the Board of Equalization administers the sales tax, we are responding.)

Mr. and Mrs. V--- F--- purchased equipment and fixtures for operating a grocery store from C--- and R--- B---. Thereafter, the F--- sold the store back to the B---s. The purchase price of \$63,000 was placed into escrow. There were a number of creditor's claims, including the claim of the Board of Equalization for sales taxes owed by the F---. In a letter addressed to you dated September 26, 1989, you were notified that in order for the Board to issue a Certificate of Payment of Sales and Use Tax with respect to the F--- tax liabilities, the amount of the purchase price, \$63,000, would have to be deposited with the Board. This payment was not made and a certificate therefore was not provided. The amounts in escrow were apparently paid out in November 1989 with the Board receiving but a small portion of that escrow disbursement.

A notice of successor liability dated February 20, 1990 was issued to the B---s pursuant to the provisions of Revenue and Taxation Code section 6811 et seq. for \$49,096.11 in tax, plus interest and penalty for a total of \$67,885.05. The person to whom a notice of successor liability is issued may file a petition for reconsideration. (Rev. & Tax. Code § 6814.) The B---s filed no petition for reconsideration and the successor liability is therefore now final.

You apparently believe that successor liability should not be imposed upon the B---s since the secured creditors demanded payment before releasing their liens on the inventory. Initially, I note that there is no provision for administrative review of this issue at this time since the B---s failed to file a petition for reconsideration and the successor liability is final. The B---s must pay the liability and may thereafter file a claim for refund. However, even if the B---s file a claim for refund, there is unfortunately no statutory basis for relief.

The fact that secured liabilities may be in an amount as much as the purchase price does not avoid the clear statutory provisions that a successor is liable for his predecessor's sales tax liability (up to the amount of the purchase price) if the successor does not obtain the certificate provided for in Revenue and Taxation Code section 6813. I note that you were notified on behalf of the B---s of need for a certificate prior to disbursement of the funds in escrow. If your contention were correct, the purchase price could easily be manipulated in order to avoid payment of sales tax and successor liability. For example, a corporation may own a business with secured liabilities of \$70,000 and a sales tax liability of \$30,000. The corporation wishes to sell its business which constitutes all its assets, for \$100,000, which will leave the corporation with nothing after the sale. However, rather than offering \$100,000, the purchaser offers \$70,000 since the sale cannot be completed unless the creditors are owed the \$70,000 owed to them. If your contention were correct, the purchasers would have no successor liability because the purchase price of \$70,000 was needed to pay off the creditors, and the selling corporation, although owing the \$30,000 in sales tax, would not pay it because it had no assets. This is not what the law provides.

If a sale cannot be completed because the secured creditors and the Board of Equalization cannot all be paid, then it would obviously be unwise on the part of the purchaser to complete the sale. The fact that the B---s found it more difficult to walk away from the purchase than would a different purchaser who was not the original seller to the F--- has no relevance to the application of the B---s statutory liability as successors who failed to obtain the Certificate of Payment of Sales and Use Tax.

Sincerely,

David H. Levine  
Senior Tax Counsel

DHL:wak  
2646C

cc: Mr. S. A. B---, --- --- Compliance