



STATE BOARD OF EQUALIZATION

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December 29, 2000

Mr. M--- M. N---
D---, W---, C---,
G--- & N---, Inc.
XXXXX --- Boulevard
--- Floor East
--- ---, California XXXXX-XXXX

**Re: Unidentified Taxpayer
Request for Advice Concerning Application of Sales Tax to Transfer of
Membership Interests in a Limited Liability Company**

Dear Mr. N---:

This letter responds to your letter addressed to Acting Assistant Chief Counsel David Levine dated October 24, 2000 in which you request legal advice on behalf of an unnamed client regarding the imposition of sales tax on the transfer of all of the membership interests of a limited liability company ("LLC").

I initially note that Revenue and Taxation Code section 6596 sets forth the circumstances under which a taxpayer may rely 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 state:

"We are writing to request the written advice of the State Board of Equalization ('SBE') concerning whether the transfer of all of the membership

interests in a limited liability company ('LLC') that owns tangible personal property ...¹ will result in the imposition of sales tax."

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) A sale includes any transfer of title or possession, in any manner or by any means whatsoever, of tangible personal property for a consideration. (Rev. & Tax. Code § 6006(a).) Where sales tax does not apply, use tax is imposed on the sales price of property purchased from a retailer for the storage, use, or other consumption in California. (Rev. & Tax. Code §§ 6201, 6401.) The term "purchase" includes any transfer of title or possession of tangible personal property for a consideration. (Rev. & Tax Code § 6010(a).)

The first question is whether there was a sale of tangible personal property. If not, the inquiry can end at that point. The phrase "tangible personal property" includes personal property that may be seen, weighed, measured, felt, or touched or which is in any other manner perceptible to the senses. (Rev. & Tax Code § 6016.) You state that the items transferred were all of the membership interests in an LLC.

The Board's published positions with respect to the tangible or intangible nature of entity ownership interests involve corporations and partnerships. Although not dispositive of the question you present, they provide analytical guidance. The sale or purchase of stock of a corporation is not the sale or purchase of tangible personal property and is not subject to sales tax. (Reg. 1595(a)(6).) Even stock purchases deemed as asset sales for income tax purposes are not treated as sales of assets (or tangible personal property) for purposes of the Sales and Use Tax Law since, in fact, they are not sales of tangible personal property. (Reg. 1595(a)(6); BTLG Annot. 395.0072 (1/28/95).) No distinction is drawn if all or part of the corporate stock is transferred. Similarly, the transfer of a limited partnership interest has been likened to a transfer of shares of corporate stock. Without specific provisions in the partnership agreement, a limited partner has no interest in specific partnership property and has no right to receive partnership property. Therefore, a transfer of a limited partnership interest is treated as a transfer of a security and is not subject to sales tax. (Reg. 1595(b)(7); BTLG Annot. 395.0835 (7/17/86).) On the other hand, the transfer of an interest in a general partnership is treated as a transfer of the partnership property if it causes a dissolution of the old partnership and creation of a new partnership with the new partner. (Reg. 1595(b)(7).) Nevertheless, where the sale of the partnership interest does not result in the dissolution of the partnership and the existing partnership continues with the new partner, the transfer treated similarly to a transfer of corporate stock. (Id.)

To determine if an ownership interest in a LLC is tangible personal property, we follow the analysis provided in the corporate stock or partnership interest determinations.

¹ Pursuant to telephone messages with Henry Reitzenstein, the request was clarified to delete the phrase "subject to sales tax" at this point.

An LLC is an entity organized pursuant to the laws of California or any other jurisdiction (“foreign LLC”). (Corp. Code §§ 17001(t), 17001(q).) An LLC is formed in California when its articles of organization, executed by one or more members, are filed with the Secretary of State. (Corp. Code § 17050.) “Articles of organization” means the documents filed with the Secretary of State, including all amendments and restatements, or, for a foreign LLC, all documents serving a similar function in the jurisdiction in which the foreign LLC is formed. (Corp. Code § 17001 (b).) The articles of organization *must* include certain information, for example, the name and statement of purpose, and *may* include other provisions not inconsistent with the law, for example, stating a dissolution date or identifying events that will cause dissolution of the LLC. (Corp. Code § 17051.)

An LLC is recognized as a separate entity, with all of powers of a natural person in carrying out its business activities. (Corp. Code § 17003.) The existence of the separate entity known as an LLC continues from formation through dissolution. (Corp. Code §§ 17050, 17350.) Dissolution of an LLC occurs at the earlier of the (1) vote of the members, (2) time specified in the articles of organization or a written operating agreement, or (3) happening of an event specified in the articles of organization or a written operating agreement. (Corp. Code § 17350.)

There are two ownership interests available for an LLC: economic interests and membership interests. “Economic interests” represents a person’s right to share in the income, gains, losses, deductions, credit or similar items of, and to receive distributions from, the LLC, but does not include any other rights of a member. (Corp. Code § 17001(n).) “Membership interests,” the subject of your inquiry, represents the bundle of rights of an owner admitted to the LLC as a member. (Corp. Code § 17001(z).) Interests in an LLC, both membership and economic, constitute personal property in the hands of a member or an assignee. (Corp. Code § 17300.) Although admitted to the LLC as a full owner with concomitant rights thereof, a member has no interest in specific property of the LLC. (Corp. Code § 17300.)

The statutory provisions creating the LLC and a member’s rights in the LLC are comparable to those of a corporation and its shareholders. That is, an owner has no interest in the underlying assets of the entity and the transfer of an interest does not terminate or dissolve the entity. Although the statutory provisions may be altered by the agreement of the members, without such alternation membership interests in an LLC should be considered like corporate stock, the sale of which is the sale of an intangible.

In your request, you state:

“The operating agreement² of the LLC that is the subject of this request for advice does not alter the statutory provisions regarding the continuation of an LLC after the transfer of membership interests therein.”

² Your letter was silent whether there were provisions in the articles of organization that alter the statutory provisions regarding the continuation of a LLC after the transfer of membership interests therein. The conclusions of this letter are based in the fact that the articles are consistent with the operating agreement.

Because the LLC does not terminate upon the transfer of membership interests, we do not consider the transfer as representing a transfer of the tangible personal property by the LLC. Therefore, based on information presented and application of the law, the LLC membership interests representing the subject of your inquiry will be treated as intangible personal property, the sale of which is not subject to sales tax. If you have any questions, please do not hesitate to write for further assistance.

Very truly yours,

Kimberly Mitchell Bott
Senior Tax Counsel

KMB/cmm

cc: Sacramento District Administrator (KH)
Mr. H--- R---, Esq.