STATE BOARD OF EQUALIZATION
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December 11, 1986

T--- L. P---
A--- & P---
XXX S. --- St., #XXX
--- ---, CA XXXXX

RE: SS --- XX-XXXXXX
ZC --- XX-XXXXXX

Dear Mr. P---:

This is in response to your letter to Tax Counsel Les Sorensen dated November 14, 1986, regarding the application of sales and use tax to a merger. In your letter you state:

> "R--- L--- Corporation ("RLC") will be merged into and with S--- - L--- Service, Inc. ("SLS") ….
>
> "1. RLC is a wholly-owned subsidiary of SLS. SLS intends to merge RLC into and with SLS in the near future pursuant to Sections 251 et seq. of the General Corporation Law of Delaware.
>
> "2. RLC owns three categories of property:
>
> a. Non-mobile equipment as set forth on Exhibit B attached hereto.
>
> b. Container chassis registered with the State of California as set forth on Exhibit C attached hereto.
>
> c. Containers as set forth on Exhibit D attached hereto.
>
> "3. RLC leases all of the property to SLS. The lease is made pursuant to a master lease agreement (a copy of which is attached hereto as Exhibit E).

> "4. On some of the property, RLC elected to pay sales tax reimbursement or pay use tax measured by the purchase price ("Tax-paid property"); with respect to the remainder of the property, the Company has elected to collect the use tax on the lease payments ("Ex-tax property")."

You ask us to agree with five conclusions set forth in your letter. I will quote and respond to each below.

> "A. There is no sales or use tax liability created due to the merger of RLC into and with SLS. 18 California Administrative Code § 1595(b)(3)."

Under Regulation 1595(b)(3), sales or use tax does not apply to the transfer of property of a constituent corporation to a surviving corporation pursuant to a statutory merger under California Corporation Code section 1100 et seq., or similar laws of other states. Assuming that Section 251 et seq. of the General Corporation Law of Delaware is similar to California Corporations Code section 1100 et seq. and that the subject merger satisfies the requirements of that law, then we agree that no sales or use tax applies to a transfer of property pursuant to that merger. (For the remainder of this opinion, we assume that the subject merger comes within the provisions of Regulation 1595(b)(3).

> "B. As to the Ex-tax property, the merger of the corporations will cause the interests of RLC, as lessor, and SLS, as lessee, to merge. Accordingly, the Ex-tax property will no longer be subject to the lease. The surviving corporation will be deemed to now use the Ex-tax property and the use tax will be applicable and will be measured by the price paid by RLC for the property. Annot 395.2150 and 18 California Administrative Code § 1660(c)(6)."

Upon merging, by operations of law the existence of RLC is continued as part of SLS, with SLS having all the rights and obligations previously held by RLC. (See, e.g., BTLG Anno. 330.2940 (8/14/69).) The extax property maintains its status as such. (BTLG Anno. 395.2150 (9/23/71).) Since the property will no longer be leased to another person, but rather will by used by its owner, we agree that SLS will be liable for use tax measured by RLC's purchase price of the property.

> "C. The use tax imposed with respect to the Ex-tax property as set forth in Paragraph B shall be offset by a credit for all taxes previously paid by RLC in connection with the lease of the Ex-tax property. 18 California Administrative Code § 1660(c)(6)."

We agree. (Reg. 1660(c)(6); BTLG Annos. 330.2940 (8/14/69, 395.2150 (9/23/71).)

"D. With respect to the Tax-paid property, there will be no sales or use tax resulting from or as a consequence of the merger due to different use or ownership or any other reason. 18 California Administrative Code § 1595(b)(3)."

We agree.

"E. With respect to all property registered with the State of California, whether or not considered mobile transportation equipment, there will be no sales or use tax arising out of or in connection with the merger except as outlined above. No sales or use taxes will be applicable to this property due to the merger either at the time the registration is changed or at any other time."

We agree that the only sales or use tax on property, including property registered with the State of California, as a result of the merger is the use tax discussed in your point B and in my response.

If you have further questions, feel free to write us again

Sincerely,

David H. Levine
Tax Counsel

DHL:jb/0229E