STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

August 12, 1971

Mr. A--- A. A---
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Attorneys At Law
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--- ---, CA XXXXX

SR – XX XXXXXX
--- & --- L--- Corporation
dba P--- M--- C--- C---

Dear Mr. A---:

This is with reference to the above named taxpayer's petition for redetermination of sales and use taxes which was reviewed at a preliminary hearing held in Pasadena on April 28.

Our conclusions on the merits of the protest are set forth below preceded by a summary of each of the grounds discussed at the hearing.

1. The rental transactions were exempt from tax because the rental property was acquired by acquisition of partnership interest in a partnership which held the property in exempt status.

This claim for exemption is based upon the provisions of section 6006(g)(5)(A) of the Revenue and Taxation Code which in essence allows the lessor of personal property to retain the tax status of his transferor if (1) the transferor paid sales tax reimbursement or use tax on its acquisition of the assets and (2) the real or ultimate ownership of the lessor is substantially similar to that of the transferor (transfer described in section 6006.5(b) of the Revenue and Taxation Code).

At the conclusion of the preliminary hearing you agreed to provide evidence to show that the individual lessors actually acquired partnership interest in the predecessor partnership. No evidence or other information has been received by this office to this date. However, assuming that the individual owners actually acquired partnership interest in the predecessor partnership it is nevertheless our conclusion that the individual lessors would not

qualify for the exclusion provided by section 6006(g)(5)(A) of the code. The admission of a new member into a partnership continuing the business results in the creation of a new legal entity (see Ellington v. Walsh, O'Connor & Barneson, 15 Cal. 2d 673; California Corporation Code section 1529). Thus the individual owners of the property did not carry on their leasing activities as members of the old partnership no could it be said that the real or ultimate owners of the property were the same of those of the predecessor partnership.

2. There was only one rental or lease of tangible personal property. Accordingly, the transfer qualifies as an occasional sale under section 6006.5(a) of the Revenue and Taxation Code because petitioner was not required to hold a seller's permit for the purpose of making a single rental sale.

Under the provisions of section 6006.1 of the Revenue and Taxation Code, the granting of possession of tangible personal property by a lessor to a lessee "is a continuing sale in this state by the lessor for the duration of the lease as respects any period of time the leased property is situated in this state, irrespective of the time or place of delivery of the property to the lessee or such other person." Under section 6203 of the code a retailer is required to collect the tax from the lessee "at the time amounts are paid by the lessee under the lease." Thus, it is clear that under the scheme of taxation of leasing sales the tax attaches while the lessee is in possession of the property and to the extent the lessee makes payments under the lease. It is, therefore, clear that the taxable event is the continuing granting of possession under the lease agreement and not the execution of a lease or rental for a specified term. Accordingly, it is our conclusion that there was a series of taxable events each constituting leasing sales and that petitioner was by reason of having made such series of leasing sales required to hold a seller's permit. It follows that petitioner's lease transactions would not qualify for exemption under section 6006.5(a) of the Revenue and Taxation Code.

3. The rental transactions qualify as occasional sales under the provisions of Revenue and Taxation Code section 6006.5(b).

Revenue and Taxation Code section 6006.5(b) provides as follows:

"'Occasional sale' includes:

* * *

"Any transfer of all or substantially all the property held or used by a person in the course of such activities when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For the purposes of this section, stockholders, bondholders, partners, or other persons holding an ownership interest in a corporation or other

entity are regarded as having the "real or ultimate ownership' of the property of such corporation or other entity."

It is our conclusion that the transfer does not qualify as an occasional sale under this section of the law. The classification made by this provision of the law is conditioned upon their being a transfer of all or substantially all of the property held in the course of activities for which a seller's permits are required. The term "transferor" is not afforded a special meaning under the Sales and Use Tax Law. However, under general law a transfer relates to a transfer of some lesser interest such as a bailment for hire (see Civil Code section 1039). Furthermore the board has consistently construed this provision as applying only to outright sales of property from one entity to another (see annotated ruling 1620.75, California Tax Service). Upon this analysis it is our conclusion that a lease or rental of tangible personal property between entities of common ownership does not qualify as an occasional sale under section 6006.5(b). I believe you are aware that the mere fact that separate legal entities are commonly owned does not of itself provide a basis for exemption under the Sales and Use Tax Law (see discussion in Northwestern Pacific Railway Co. v. State Board of Equalization, 21 Cal. 2d 524).

At the preliminary hearing we provided you with detailed information as to the method of computing the rentals attributable to the tangible personal property. Since no specific question has been raised our report does not include any recommendation with respect to any objection you may have to the method of computing the measure of tax.

In view of the above stated conclusions we have recommended that the taxes be redetermined without adjustment. In due course your client will receive a notice of redetermination which will constitute official notice of the action taken on the petition.

Very truly yours,

W. E. Burkett
Tax Counsel

WEB:kc
bcc: --- --- – District Adm.

Attached are two copies of hearing report dated 7-28-71.