

**M e m o r a n d u m****395.0093**

To: Oakland - Auditing (LFF)

Date: October 27, 1982

From: Tax Counsel (LS) - Headquarters

Subject:

This is in response to your memoranda of September 15 October 13, 1982. You indicated that ---entered into three separate joint ventures for purposes of accomplishing three large construction projects.

Separate written agreements were executed for each project and were dated, respectively, March 5, 1978, November 17, 1978, and March 18, 1980. Prior to 80% completion of the projects, equipment was transferred either to one of the other joint ventures or back to the individual joint venturers. In some cases, equipment transferred back to a joint venturer was subsequently transferred into one of the other joint ventures. Where this was done, the contributions were in ratios equal to the joint venturers' interests in the joint venture from which the equipment was derived.

Each of the joint ventures filed separate income tax returns. Ownership interests in the three joint ventures were as follows:

1. March 5, 1978 joint venture	40%	35%	25%
2. November 17, 1978 joint venture	40%	35%	25%
3. March 18, 1980 joint venture	59%	39.5%	1.5%

--- we understand, withdrew totally from all three joint ventures in August 1981.

Based on the foregoing, you asked the following questions. Our responses will follow each question.

A. Is each joint venture a separate entity?

Yes. Revenue and Taxation Code section 6005 defines "person" to include joint ventures. "Joint venture" has been defined by the California courts as an undertaking by two or more persons, without a corporate or partnership designation, formed for the purpose of carrying out a single business enterprise for profit (See Nelson v. Abraham, 29 Cal.2d 745; Holtz v. United Plumbing & Heating Co., 49 Cal.2d 501). Your description of the arrangements herein coupled with our review of the agreements which you provided clearly indicate that each of the three arrangements was a joint venture and, accordingly, a "person" to be treated as a separate entity.

B. If question (A) is affirmative, would sales between the joint ventures be subject to tax?

Yes. The only qualification to our response would arise if there was a sale or reorganization pursuant to Regulation 1595, subdivision (b), i.e., where the transfer was of 80% or more of all tangible personal property and real or ultimate ownership was "substantially similar" after the transfer. Under such circumstances, no tax would be due.

C. Is it proper to consider transfers back to the individual partners, prior to 80% completion of each project, not as liquidating dividends but as sales subject to tax.

Yes. Joint ventures are similar to partnerships and withdrawals of property by a joint venturer and the debiting of its advance accounts are transfers of tangible personal property for a consideration and, therefore, sales of the property transferred (See BTLG anno. 495.0780).

D. In regard to transfers back as described in (C), would each project be considered separately or would all three projects have to be considered as a whole?

Since each project was performed by a different joint venture, each project should be considered separately.

E. Where one of the joint venturers sold all of its interest in each joint venture to the other two co-venturers, would the seller-venturer have made a taxable retail sale?

Our understanding is that each of the co-venturers is a retailer in its own right and each holds a California seller's permit. Under such circumstances, we would view the transfer of tangible personal property from the withdrawing co-venturer to the remaining co-venturers for a consideration as a taxable retail sale (See BTLG anno. 495.0780).

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