



STATE BOARD OF EQUALIZATION

April 7, 1953

Mr. D--- S. M---
Attorney at Law
XXXX --- --- Building
XXX --- ---
--- --- XX, California

Dear Mr. M---:

Your letter addressed to Mr. Harry L. Say has been referred to me for reply. You request a ruling with respect to the following transaction involving a limited partnership consisting of husband and wife as general partners (whose interest in the same is about 80%), the remainder owned by limited partners who are primarily relatives.

This partnership owns certain power sewing machines, furniture, and fixtures and equipment at a branch plant which it desires to sell to a corporation. 80 to 85% of the stock of this corporation is owned by the husband and wife who are the general partners in the limited partnership. The remaining stockholders are friends and relatives who in some instances are the same individuals as the limited partners in the partnership. You request advice as to whether this sale would be exempt from tax as an occasional sale under section 6006.5 of the Sales and Use Tax Law.

In order for a transaction to be exempt under section 6006.5(b) there are three necessary elements, each of which must be present. These are (1) the transfer must be of all or substantially all of the property, (2) held or used by a person (which includes partnerships and corporations) in the course of an activity for which he is required to hold a seller's permit, and (3) after the transfer the real or ultimate ownership of the property transferred is substantially similar to that which existed before the transfer.

If we assume that the real or ultimate ownership of the property involved in the proposed transaction is substantially the same after the transaction to that which existed before the transfer (and, in so determining, we usually apply as a rule of thumb, the same 80% test as is used under the Internal Revenue Code for tax exempt organizations) and we assume further that the property was held or used in an activity requiring a seller's permit (and it would seem that it was), we still have

the problem of determining whether the transfer was all or substantially all of the property so held. In view of the fact that the transfer is of equipment at a branch plant, it is our opinion that the transfer would not meet this last test and therefore would be subject to sales tax.

Very truly yours,

E. H. Stetson
Tax Counsel

JHM:ja

cc: --- --- - Auditing