

M e m o r a n d u m**395.1525**

To: Audit Evaluation and Planning Unit
(G. Lambert)

Date: April 14, 1989

From: E. L. Sorensen, Jr.

Subject: A--- - H--- Group
SY -- XX-XXXXXX-XXX

We have reviewed the materials you provided concerning the subject taxpayer's rearrangement of its business operations. Reiterated below are the pertinent facts and our opinion as to how the law should apply.

Facts

“Taxpayer, a corporation, has been in business since 1966. During that time, there have been two corporate name changes, the last being from ‘A--- D--- Company’ to the present name [A--- - H--- Group].

“Up until 1985, taxpayer operated two divisions. A--- D--- sold doors and some other building materials; M--- L--- sold kitchen cabinets and appliances.

“At its March 1, 1985 meeting, the Board of Directors approved the most recent corporate name change and a plan for reorganization. Under that plan, two new corporations would be created. The assets and liabilities of each of the two divisions, A--- D--- and M--- L---, would be transferred to the two new corporations in exchange for their stock. The result would be taxpayer as a holding company with two wholly-owned subsidiaries.

“By June 1985, the creation of the new M--- L--- subsidiary, the transfer of the assets and shares of stock, and the required filings appear to have been completed. A bill of sale transferring the assets was dated June 14, 1985.

“It was not until November 1985 that the creation of the new A--- D--- subsidiary, the transfer of the assets and shares of stock, the first meeting of the new board, and the required filings had been completed. The stock transfer was accomplished at the October 7, 1985 meeting of A---’s [A--- D---’s] board.”

Opinion

In our view, the June 14, 1985 transfer of assets for stock between A--- - H--- and M--- L--- is a transaction separate and apart from the subsequent November 1, 1985 transfer of assets for stock between A--- - H--- and A--- D---.

Revenue and Taxation Code section 6006.5(b) defines an occasional sale to include:

“ (b) Any transfer of all or substantially all the property held or used by a person in the course of those activities when after the transfer the real or ultimate ownership of the property is substantially similar to that which existed before the 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 the corporation or other entity.

An occasional sale is exempt from tax (Rev. & Tax. Code § 6367).

Section 6006.5(b) speaks of a transfer of property without specifying a time to test the effect of the transfer. We, therefore, are of the opinion that the requirement for a “... transfer of all or substantially all of the property ...” must be tested immediately after the transfer in order to qualify for the section 6006.5(b) exemption. Applying that standard to the A--- - H---/M--- L--- transfer, leads us to conclude that the section 6006.5(b) exemption does not apply to it. (Our conclusion necessarily assumes that less than 80% of the A--- - H--- assets were transferred on June 14, 1985). We note that the contribution to a commencing corporation-provisions of Regulation 1595(b)(4) appear to be applicable to this transaction.

Regarding the A--- - H---/A--- D--- transfer on November 1, 1985, it appears that the section 6006.5(b) exemption would apply since our understanding is that all the remaining property of A--- - H--- was transferred and there is no dispute that real or ultimate ownership following the transfer was substantially the same as it was before the transfer (See Reg. 1595(b)(2)).

ELS:jh