

3-9-66

(To San Jose District)

We have reviewed the material enclosed with your letter of March 2, 1966.

The acquisition of assets in transactions described in Internal Revenue Code § 368(a)(1)(C) are "sales" within the meaning of § 6006(a) of the Sales and Use Tax Law. If at retail, such transfers of tangible personal property are taxable unless otherwise exempt (i.e., "occasional sales" as defined in § 6006.5).

The simplest test to differentiate the "sale" from the statutory merger is this:

In a "sale" one corporation transfers its assets to another corporation and the transferor corporation receives its consideration. The consideration (or "gross receipts" if tangible personal property is sold) may be cash, corporate stock or securities, assumption of indebtedness, or any combination of these. Thereafter, the transferor corporation may (but is not required to) dissolve and distribute the consideration to its shareholders.

In a statutory merger, upon the filing with the Secretary of State of the approved merger agreement the transferor corporation ceases to exist and the surviving corporation "shall succeed, without other transfer, to all of the rights and property of each of the constituent corporations, and shall be subject to all of the debts and liabilities of each, in the same manner as if the consolidated or surviving corporation had itself incurred them." (Cal. Corp. Code § 4116.) Needless to say, in the instances where title is recorded or registered (i.e., real property, automobiles, boats, securities) action must be taken to change the recorded or registered owner's name. But this will not give rise to tax. Also, stockholders of the disappearing corporation exchange their stock in that corporation for stock in the surviving corporation.

The reason for treating the two transactions differently are set forth in the attached copy of my letter of March 2, 1966, to --- --- ---.

In view of the conclusions expressed above, please disregard the letter of February 8, 1966, from Tax Counsel (PRD).

(JHM)

# Memorandum

**395.2120**

August 1, 1978

395.2120. Statutory Merger and Sale of Assets Distinguished.

The Corporation Code sections referenced in this annotation have changed and the wording of the annotation is garbled. The first paragraph of the annotation will be amended to read as follows:

“A statutory merger is a merger pursuant to Section 1100 et seq. of the California Corporations Code or similar laws of other states. Upon the filing of the approved merger agreement with the Secretary of State (or the designated official in the other state), the transferor corporation ceases to exist and without other transfer its assets and liabilities become the assets and liabilities of the surviving corporation.” 3/9/66; 5/12/88.

DJH:rar