



STATE BOARD OF EQUALIZATION

Attorneys at Law

_____, CA

Dear Mr. _____,

This is with reference to the petition for redetermination filed on behalf of _____ as a successor to the used car business of _____ and/or _____, dba _____.

Liability was originally asserted against _____ as a successor to _____ and _____. You contended that the purchase of the used cars was from a corporation, not an individual. In order to correct the technicality, a determination has been issued against the corporation and your client has now been issued a determination as successor to the corporation.

The corporation, under Mr. _____ management, failed to take out a seller's permit and Mr. _____ failed to cause his permit to be cancelled. Thus, Mr. _____ used his own permit to report some of the corporation transactions. He failed to report any sales of used cars for the last quarter of 1967, thus giving rise to the major portion of the measure of tax liability. Notwithstanding the fact that the technicality has been corrected by a determination against the corporation and a determination against _____ as successor, there appears to be a good case here for applying the doctrine of alter ego against Mr. _____ and holding him personally liable for sales by the corporation.

You contend that all of the corporation assets were not sold to your client, and thus the transaction did not constitute a bulk-sale transfer. We think the argument is specious. Like an individual, a corporation may engage in different and entirely separate businesses, and we see no basis on which to disregard the separate business enterprise concept here. The business enterprises of _____, Inc., and/or Mr. _____ are so unrelated that they cannot be deemed to be departments or subdivisions of one unified business constituting a single economic enterprise. Further, pursuant to requirements under sections 6101-6107 of the Uniform Commercial Code, the parties published a "Notice to Creditors of Bulk Transfer" relative to the sale under consideration.

In addition, the evidence indicates that _____ did more than merely purchase some used cars for resale. In fact, the whole transaction was carried out in a manner consistent with the purchase of a business. For example:

1. _____ acquired the corporation's accounts receivable.
2. _____ purchased all of the "stock of goods" (i.e., the used cars).

3. _____ took over and operated the used car lot location of the corporation for about two weeks. Apparently, the location and/or the lease assignment arrangements were not satisfactory, so _____ moved off of the _____ Boulevard location and the used cars were placed on the _____ Avenue location. However, the short span of time at the seller's location does not negate a successor status.

The fact that no good will was acquired does not negate a successor status either. Here there probably was no good will. The corporation went into the used car business enterprise sometime around April 1967 and sold out to _____ in December 1967.

Section 6811 of the Sales and Use Tax Law provides as follows:

If any person liable for any amount under this part sells out his business or stock of goods or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the board showing that it has been paid or a certificate stating that no amount is due.

Section 6812 of the law provides in part as follows:

If the purchaser of a business or stock of goods fails to withhold purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase priced, valued in money.

I have underlined the words "stock of goods" because, notwithstanding any question of fixtures and equipment, the entire stock of used cars along with the accounts receivable were sold.

In this case, instead of producing a certificate from the Board of Equalization that no tax was due, and instead of withholding an amount great enough to cover any liability of the seller, your client and Mr. _____ chose to waive this provision of the law. Paragraph 13 of the escrow instructions on the sale of the business (page 2) provided:

The Seller agrees to furnish the Lawndale Escrow Co. with releases from the State Board of Equalization, Department of Employment and Director of Internal Revenue prior to the close of escrow.

On December 7, 1967, the following instruction was sent to the escrow company:

The undersigned, Buyers and Sellers herein authorize and instruct you as escrow holders to delete in its entirety PARAGRAPH #13 of the original escrow instructions wherein same required releases from State Board of Equalization, Department of Employment and Director of Internal Revenue; and you as escrow holders shall be held harmless in procuring same so far as Escrow 2117 is concerned.

Summarily, it is our opinion that _____ is the successor to the _____ used car business and is liable for unpaid taxes as the successor. Thus, we are going to recommend that the petition for redetermination be denied.

If, after considering our recommendation and the reasons for it, _____ no longer desires a hearing before the board as requested, please execute two of the three waiver of hearing forms and return them to use. The third is for your records.

Very truly yours,

Robert H. Anderson
Tax Counsel