

M e m o r a n d u m**535.0090**

To: Collections Unit (PKT)

June 26, 1978

From: W. E. Burkett

Subject: D. G. S--- P--- Company
V--- EnterpriseSY -- XX-XXXXXX
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We have reviewed the file and the various documents summarizing the investigation of the successorship liability issue. It is our considered conclusion that D. G. S--- P--- Company, dba L--- P--- L--- Company (L--- P---), was not the successor to V--- E---, Inc. (V---) and therefore may not be held liable for this entity's sales and use tax liability.

As you are aware, a person may be held to be a successor where he acquires the predecessor's business or a stock of goods.

What constitutes a business activity for purposes of this section is not defined by statute and is difficult to state with any precision. As a general rule, a purchaser may be held to have purchased the business where for a consideration he acquired all seller's rights to engage in the business at a given location. It is requisite that there be more than a purchase of operating assets in order to constitute a purchaser as successor under the statute (People v. Gobriel, 57 Cal. App. 2d 738).

In the instant case, L--- P--- merely purchased the real property and equipment of the seller and embarked upon a dissimilar type of business activity. It did not acquire the seller's trade name, customer listing, accounts receivable, or other assets normally associated with the purchase of a going business. Nor did it sell a covenant not to compete with the purchaser. Thus in theory the seller could have immediately resumed its business activity at an adjacent location. In summary, there is no evidence to support a finding that the purchaser acquired the business of the seller.

While L--- P--- held an option to purchase, the inventory material and supplies of the vendor, our review of the escrow agreement confirms that it did not exercise this contract right.

WEB:po
Attch: Files

cc: San Bernardino – District Administrator (JAC)