



July 24, 1981

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Re: XX.

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Dear Mr. ---:

This is in response to your letter of May 11, 1981 to Mr. David Barbeiro of our staff which raised a question as to whether or not you are required to obtain a seller's permit and report tax based on certain rental receipts.

Following is our understanding of the background and circumstances surrounding this matter. In the latter part of 1980 you purchased all of the stock in XX., a California corporation which owned and operated a bowling alley, restaurant, and golf driving range. Following your acquisition of the stock, you dissolved the corporation. You then leased the real and tangible personal property acquired in the dissolution to A. You indicated that sales or use tax had been paid, with respect to all the tangible personal property leased, upon acquisition of such property by XX.

Whether or not you will be required to obtain a seller's permit and report tax based on rental receipts turns on whether or not you come within the purview of Revenue and Taxation Code Sections 6006, subdivision (g)(5), 6006, subdivision (g)(5)(A), and 6006.5, subdivision (b). Those sections provide, respectively:

Tangible personal property leased in substantially the same form as acquired by the lessor or leased in substantially the same form as acquired by a transferor, as to which the lessor or his transferor acquired the property in a transaction that was a retail sale with respect to which the lessor or the transferor has paid the sales tax or as to which the lessor or the transferor has paid use tax measured by the purchase price of the property. For purposes hereof, transferor shall mean the following:

(A) A person from whom the lessor acquired the property in a transaction described in subdivision (b) of Section 6006.5.

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

In our opinion, the dissolution of the corporation and simultaneous transfer of its property to you was an occasional sale within the meaning of Section 6006.5, subdivision (b), since, following the transfer, the real or ultimate ownership of the property was substantially similar to that which existed before the transfer.

It follows, under Section 6006, subdivision (g)(5)(A), the corporation was a person from whom the lessor (you) acquired the property in a subdivision (b), Section 6006.5 transaction. Assuming, as you indicated, that sales or use tax due was paid with respect to the acquisition by the corporation of the tangible personal property which was transferred to you upon dissolution, and assuming that the property is being leased in substantially the same form as acquired, no additional tax is due based on your lease of the property (Rev. & Tax. Code § 6006(g)(5)). Under these circumstances, you would not be deemed a “seller” and, accordingly, would not be required to hold a seller’s permit (see Rev. & Tax. Code §§ 6014, 6066).

Very truly yours,

Les Sorensen  
Tax Counsel

LS:po

bc: D. J. Hennessy

Modesto – District Adm.

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CIR