

M e m o r a n d u m**395.1680**

To: Los Angeles – Dist. Prin. Aud. (JTQ)

Date: March 18, 1969

From: Tax Counsel (JKM)

Subject: Application of Section 6006.5(b)

This is in reply to your memo dated February 24, 1969 concerning the application of the above-mentioned section.

We understand that the taxpayer, as a sole proprietor, was engaged in the restaurant business and had two restaurant locations. As of December 31, 1967, his net capital was an equity of \$24,152 at his Lancaster location and a deficit of \$201.59 at his Newhall location. At that time he reorganized, and he simultaneously transferred the Lancaster location to a beginning corporation in return for the entire equity, which was represented by a note of \$27,152, and the assumption of liabilities of \$44,612.28, and the Newhall location to a beginning partnership in return for a 50 percent partnership interest valued at \$202 and the assumption of an indebtedness of \$13,357. Taxpayer was to be the sole stockholder of the corporation and owned the partnership equally with his son-in-law.

You point out that if the transaction is to be considered as a whole, taxpayer transferred all of his assets used in activities requiring the holding of seller's permits, and thereafter, his combined equity in those assets was approximately 87 percent. However, his percentage of ownership of the entities was not in this ratio since approximately 73 percent of his assets were transferred to the corporation and the remaining 27 percent were transferred to the partnership. You suggest that as substantially all the assets were not transferred to either entity, the transaction does not meet the requirements of Section 6006.5(b).

In applying Section 6006.5(b), we have compared the real or ultimate ownership of property transferred to that ownership which existed before such transfer to determine whether it was substantially similar, but we have not required that substantially all the property be transferred to one entity. Thus, a sale by a corporation is an exempt occasional sale under Section 6006.5(b) where substantially all its assets are transferred simultaneously to three separate corporations having substantially the same ownership as the transferor (CTS Anno. 1621.10) A simultaneous

transfer of all the assets of a corporation to a newly formed corporation and to a newly formed partnership is an exempt occasional sale when after the transfer the real or ultimate ownership of the property is changed less than 20 percent (Anno. 1621.90) A simultaneous transfer of all the assets of a corporation to two or more subsidiary corporations, of which the transferor owns at least 80 percent of the stock in each, is an exempt occasional sale (1621.45). It would seem to follow that if after a transfer the real or ultimate ownership of the property in the transferee entity, or in each entity when there are several, is changed more than 20 percent, the transaction would not be an exempt occasional sale under this section.

There remains the situation where a taxpayer transfers substantially all its assets in a single transaction to several entities when after the transfers the ownership of the property in some entities is changed less than 20 percent while in others it is changed more than 20 percent. For the transaction to be exempt as an occasional sale under Section 6006.5(b) we think that after the transfer, the real or ultimate ownership of the property in any of the transferee entities may not be changed more than 20 percent. Section 6006.5 contemplates one transaction transferring all or substantially all of a taxpayer's property. In the case of a transfer to a single entity, for the transaction to be exempt the resultant ownership of the property must be similar to that which existed before the transfer. In the case of transfers to several entities, for the transaction to be exempt each transfer which is a part of that transaction must be exempt.

In this case, taxpayer owned 100 percent of the stock in the newly created corporation but owned only a 50 percent interest in the newly created partnership. Since the ownership of the assets transferred to the transferee-partnership is not similar to that which existed before the transfer, this transaction (both transfers) would not qualify as an occasional sale under Section 6006.5(b).

JKM:smb [lb]