

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6493

May 2, 1988

Mr. F--- F---
Corporate Tax Department
S--- C--- of A---, Inc.
--- Drive
--- ---, New Jersey XXXXX

S--- C--- of A---, Inc. – SY -- XX-XXXXXX
Occasional sale of corporate assets – tax free
Reorganization

Dear Mr. F---:

In your March 9, 1988 letter to Mr. Les Sorensen, Senior Tax Counsel, which was referred to me for reply, you write in summary that S--- C--- of A---, Inc. (S---) is considering a tax-free restructuring under Internal Revenue Code Section 351. As a result of the reorganization, the new corporation (new S---) will become an operating company and will conduct the same operations as the former operating company (old S---). The former operating company will be "S--- C--- of A---" and the holding company's name will change from S--- C--- of A--- to S--- U---, Inc. The old S--- (the transferor) will transfer its operating assets to the new S--- (the transferee). In exchange for these operating assets, new S--- will transfer new S---'s stock to the old S---.

You write:

"In connection with the proposed restructuring, S--- C--- of A--- respectfully requests a letter ruling on the following two sales tax questions.

"1. Is there any sales/use tax due on the transfer of the assets from old S--- to new S---?

"2. Are we required to obtain new sales tax exemption certificates from the tax exempt customers transferred from OLD S--- to NEW S---?

"NOTE: Our vendor name on any new tax exemption certificates will be the same as on the old certificates, i.e., "S--- C--- of A---". However, the "New" S--- C--- of A--- will be a different legal entity performing the same business functions

as OLD S---. Since we currently have approximately 7,220 exemption certificates for California, it would be an extreme burden to obtain new exemption certificates for this new company.

“It is understood that the NEW S--- will be required to obtain a new sales tax registration number.”

Opinion

In answer to your first question, our opinion is that there is neither sales tax nor use tax due on the transfer of tangible assets from old S--- to new S---. This is because under the provisions of Regulation 1595(b)(4), tax does not apply to a transfer of operating assets to a commencing corporation in exchange solely for first issue stock of the commencing corporation.

However, tax would apply if the transferor received consideration for the transfer of the assets, such as an assumption of indebtedness, unless another exemption applied. For example, the transfer of operating assets from old S--- to new S--- for a consideration would nevertheless qualify as an occasional sale exempt from tax under Regulation 1595(b)(2) if that transfer constituted 80 percent or more of the assets held or used in all of old S---'s activities which require a seller's permit (or would require a permit if the activities were conducted in California), since the real or ultimate ownership of the assets will remain the same after the transfer.

In answer to your second question, you are not required to obtain new sales tax exemption certificates from the customers who transfer their purchases from old S--- to new S---. The validity of those exemption certificates depends upon whether they meet the requirements of Regulation 1667, 1668, or other applicable certificate forms prescribed under other regulations, and not whether the exemption certificates are changed to reflect the fact that the new S--- is a different legal entity than the old S---.

I enclose for your information copies of Regulations 1595, 1667, and 1668 for your information. Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott
Tax Counsel

JA:jb
Enclosures