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**STATE BOARD OF EQUALIZATION**

September 27, 1966

T---, M---, J---  
& B---  
Attorneys at Law  
--- --- Street  
--- ---, CA XXXXX

Attention: Mr. F--- H. L---

SR -- XX XXXXXX  
F--- I---, Inc.

SY -- XX XXXXXX  
P--- C--- O--- Co.

Gentlemen:

This is in reply to your letter of September 8, 1966, submitting additional information and argument with regard to a proposed statutory merger and related transactions between F--- I---, Inc. and P--- C--- O--- Co. After carefully considering this information, together with the information submitted in your letter of September 19, we find that our position as to the application of California sales and use taxes to the transactions in question remains unchanged from that stated in our letter to you of September 1.

With reference to the situation where, after the statutory merger between F--- and P---, F--- transfers all of the assets received from P--- to a newly formed corporation in exchange for the stock of the new corporation and the new corporation assumes liabilities of P--- existing at the time of the merger, we believe that the transfer of tangible personal property to the new corporation would be subject to tax on a pro rata basis.

As I explained to you in our telephone conversation of Friday, September 23, we do not believe that the transfer of assets to the new corporation would qualify as an occasional sale within the meaning of § 6006.5(b) of the California Sales and Use Tax Law. Section 6006.5(b), as interpreted by ruling 81, requires a transfer of all, or substantially all, of the property held or used in the course of an activity for which a seller's permit is required. You state that, while most of F---'s operations are conducted through subsidiary corporations, it owns a textile manufacturing plant in ---, Georgia. It appears, therefore, that not all, or substantially all, of the property used in an activity for which a seller's permit is required would be transferred to the new corporation, thus the transfer would not qualify as an occasional sale.

T---, M---, J---  
& B--- (SR -- XX XXXXXX  
and SY -- XX XXXXXX)

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You have suggested that the transfer of the property received from P--- should qualify as an occasional sale because those assets relate to an activity which is separate and distinct from F---'s textile plant and, therefore, all of the property used in P---' particular activity (cotton ginning, etc.) would have been transferred. We have long been of the opinion, however, that the distinction between activities contemplated by § 6006.5 relates solely to the distinction between activities for which a seller's permit would be required and those activities for which a seller's permit would not be required. In order to qualify as an occasional sale, all, or substantially all, of the property held or used in any activity for which a seller's permit would be required must be transferred.

As an added thought, let me suggest a method of handling the F--- - P--- transaction which may not have occurred to you. Property used in activities for which a seller's permit would be required may be transferred to more than one entity so long as the ownership of such property remains substantially the same. (California Tax Service, annotation number 1621.15.) If, following the statutory merger, F--- transferred the assets received from P--- to one subsidiary and the textile plant, etc., to another subsidiary, all as a single transaction, an occasional sale would result. This alternative might prove more feasible than the one outlined in your original letter of August 22, 1966. There is, of course, the possible complication of taxes imposed by other states, such as Georgia, which would have to be considered.

Very truly yours,

Richard H. Ochsner  
Associate Tax Counsel

RHO:mm

cc: Hollywood – District Administrator  
Fresno – District Administrator