

**STATE BOARD OF EQUALIZATION**

(916) 445-5550

November 18, 1988

Ms. L--- L. F---
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XXX --- ---, Suite XXX
---, CA XXXXX

Dear Ms. F---:

This is in response to your letter dated October 6, 1988 sent to us on October 27, 1988, regarding the application of sales or use tax to a transfer between related entities.

Your client is a partnership which operates a houseboat rental business, the only asset of which is the houseboat. The partnership pays use tax on the rental revenue. The partners now intend to transfer their partnership interests to a corporation in exchange for stock. Although it is not entirely clear from your letter, it appears that the transfer will occur in two steps. It appears that each partner will obtain his or her pro rata share of the partnership assets in a transfer from the partnership. It appears that each partner will then transfer his or her interest in the houseboat to the corporation in exchange for the corporate stock. It is not clear whether any other consideration is involved in these transfers.

You refer to the exemption from sales tax provided by Revenue and Taxation Code Section 6367 for "occasional sales" as defined by Section 6006.5(b). Section 6367 specifically excludes from its purview transfers of vessels, such as the houseboat in question.

The exemption that may be relevant to this transaction is provided by Section 6281. As relevant here, that section exempts transfers of vessels from sales or use tax when the vessel is included in a transfer of all or substantially all the property held or used in the course of business activities of the person selling the property when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For purposes of this section, stockholders and partners are regarded as having the real or ultimate ownership of the property of that corporation or partnership.

Since the only asset of the partnership is the houseboat, its transfer will be all of the property held in the course of business activities of the partnership. Since each partner will own the same percentage of ownership in the houseboat after the transfer as that partner owned in the partnership, the ultimate ownership will be substantially similar to that which existed before the transfer. (See Reg. 1595(b)(2).) Thus, the transfer will qualify for the Section 6281 exemption.

If the individual partners receive no consideration upon their transfer of the houseboat to the corporation other than the first issue of stock of that corporation, there would be no sales or use tax applicable to the transfer. (Reg. 1595(b)(4).) If, however, there is some consideration received by the partners such as an assumption of liability by the corporation, then that consideration will form the measure of tax unless the transfer qualifies for the Section 6281 exemption discussed above. Assuming the transfer to the corporation is part of a transfer of at least 80% of the tangible personal property held or used by each of the individual partners in the course of their business activities, and assuming that the stock they receive in the corporation is proportionate to the ownership interest each held in the houseboat, the transfer would qualify for the Section 6281 exemption.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Tax Counsel

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