


**STATE BOARD OF EQUALIZATION**

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January 27, 1994

This is in reply to your September 14, 1994 letter regarding the application of successor's liability for sales and use tax owed by \_\_\_\_\_ given the following facts you described:

“Pursuant to a Hotel Purchase Agreement dated August 15, 1994, and subsequent assignments of the purchaser's rights and obligations, \_\_\_\_\_ and \_\_\_\_\_, Co-Trustees of the \_\_\_\_\_ Trust (the 'Seller'), will sell to \_\_\_\_\_ the furniture, fixtures, equipment and inventory, and to \_\_\_\_\_ the real property and improvements, which together constitute the \_\_\_\_\_ in \_\_\_\_\_, California (the 'Property'). \_\_\_\_\_ will, in turn, lease property and improvements to \_\_\_\_\_, which will assume an existing 'Hotel Operating Agreement' with \_\_\_\_\_ Hotel Company.

“Prior to its acquisition of the Property, the Seller was the holder of a note from \_\_\_\_\_, a California limited partnership ('\_\_\_\_\_') secured by the Property. \_\_\_\_\_ defaulted on the note and the Seller foreclosed on the security. The real property and improvements were acquired by the Seller as the bidding beneficiary at a trustee's sale held on May 2, 1994 (the 'Trustee's Sale').” A copy of the Trustee's Deed Upon Sale is attached. The personal property, including the furniture, fixtures, equipment and inventory were also acquired by the Seller at the Trustee's Sale pursuant to Section 9501(4) (a) (ii) of the California Uniform Commercial Code.

“In the process of the due diligence review being conducted by \_\_\_\_\_ and \_\_\_\_\_, it was discovered that the State Board of Equalization has issued to \_\_\_\_\_ a Demand for Immediate Payment dated June 7, 1993 for a total amount of tax, interest and penalties in the amount of \$911,214 (the 'Tax Liability').”

You asked for our opinion that neither \_\_\_\_\_ nor \_\_\_\_\_, nor any of their successors will incur successor's liability for \_\_\_\_\_' tax liability, or for any other sales or use tax liability, penalties or interest of any predecessor owner of the property incurred prior to the trustee's sale under Sections 6811 through 6815 of the Revenue and Taxation Code or Sales and Use Tax Regulation 1702, Successor's Liability.

As you noted, subdivision (a) of Regulation 1702 provides that successor's liability does not arise in connection with the transfer of a business pursuant to the foreclosure of a mortgage. On the other hand, subdivision (b) of Regulation 1702 provides that the liability of a successor or purchaser of a

business or stock of goods extends to amounts incurred with reference to the operation of the business by the predecessor or any former owner.

We believe that \_\_\_\_\_ Trust's foreclosing on the mortgage does not result in the Trust's incurring successor's liability for sales and use tax liability owed by \_\_\_\_\_ or a prior predecessor. (Sales and Use Tax Reg. 1702, subd. (a).) We also believe that, under the facts you provide, neither \_\_\_\_\_ nor \_\_\_\_\_ incur successor's liability for the liability of \_\_\_\_\_ or any of its predecessors. We agree with your conclusion that the Board would defeat the policy of subdivision (a) of Regulation 1702, expressed above, if the Board were to impose successor's liability against \_\_\_\_\_ and \_\_\_\_\_ for that liability, because the burden of the liability would fall on the Trust. If the Trust had no tax liability nor successor's liability at the time of the sale, then the purchaser from the Trust has no duty under Revenue and Taxation Code section 6811 to withhold any of the purchase price.

On the other hand, if \_\_\_\_\_ Trust is a retailer, the sale of tangible personal property by the Trust is subject to sales tax. In such case, if the Trust's sale were subject to sales tax, and the Trust does not pay sales tax on that sale, \_\_\_\_\_ or \_\_\_\_\_ would incur successor's liability for any such liability owed by the Trust. Also, \_\_\_\_\_ and \_\_\_\_\_ may take title to the real property and tangible personal property subject to state tax liens imposed pursuant to Revenue and Taxation Code section 6757.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick  
Senior Tax Counsel