**State of California**

**Board of Equalization**
**Legal Division (MIC:82)**

**535.0040**

# Memorandum

**To:** Mr. J. W. Cornelius
Supervisor, Petitions Section

**Date:** July 2, 1992

**From:** David H. Levine
Senior Tax Counsel

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**Subject:** A Corp.
B Corp.
C Corp.
D Corp.

This is in response to your memorandum dated May 26, 1992. A Inc. has filed a petition for redetermination, as a successor in interest, of determinations issued against the other three taxpayers listed above. You ask if A Corp. can be considered an interested party in regard to any or all of these determinations as provided by section 6561. You explain:

> "As we understand the situation, D Corporation was taken over by B Corporation. C Corporation, a wholly owned subsidiary of B Corporation was then merged into B Corporation. Finally, B Corporation was merged into A Corporation.
>
> "At the time the audit was conducted, the records for all these corporations were obtained from A Inc. Corporation and they have been instrumental in completing the audit assignment. Copies of all Notices of Determination issued to the three companies were sent to A Corporation who has now filed petitions for all these entities as a successor in interest."

Section 6561 allows a person who is not the taxpayer against whom a determination is issued to file a petition for redetermination of the assessment if that person is "directly interested." If there is one thing that is clear about this phrase it is that its meaning is not particularly clear. As I have noted in previous memoranda to your staff, we must be very careful in interpreting the meaning of this phrase. Fortunately, however, here the proper resolution does not appear to be a problem.

In your explanation, you state your understanding that D Corporation was taken over by B Corporation. Since the other two transactions you mention were mergers, apparently this one was not. If not a merger, it appears that it must have been a purchase of the business. If this were the case, the purchaser would be a successor and would be liable for any tax due on the previous

account if that purchaser did not obtain a tax clearance. (I assume that it did not.) Since D Corporation apparently no longer exists, if there is tax owing, we would certainly look to B Corporation. On this basis, it appears that B Corporation can be regarded as directly interested in the determination issued against D Corporation.

The other two transactions were mergers. Subsection (a) of California Corporations Code section 1107 states:

> "Upon merger pursuant to this chapter the separate existence of the disappearing corporations ceases and the surviving corporation shall succeed, without other transfer, to all the rights and property of each of the disappearing corporations and shall be subject to all the debts and liabilities of each in the same manner as if the surviving corporation had itself incurred them."

As set forth in this provision, the survivor of a merger stands in the place of the corporations merged into the survivor. Although the mergers here may have been accomplished pursuant to the law of another state, the relevant provisions in that other state would undoubtedly be substantially similar to section 1107 since it fairly describes the inherent nature of corporate mergers. A Corporation now stands in the place of the two [B and C] corporations. Whatever those corporations owed at the time of the merger, A Corporation now owes. If there remains any tax due after the administrative proceedings on the determinations issued against the two [B and C] corporations, A Corporation, as the survivor of the mergers, will owe that liability. This would not be the vicarious liability of a successor, but rather A Corporation will have direct liability as if it had been the holder of those seller's permits, since, by virtue of the mergers, it effectively was.

Based on your description of the relevant facts, we conclude that A Corporation is an interested party in the determinations issued against the other three taxpayers listed above and may therefore properly file petitions for redetermination of those assessments.

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