

Memorandum

535.0050

To: Mr. Robert Wils
Petition Unit

Date: October 16, 1990

From: David H. Levine
Senior Tax Counsel

(916) 445-5550
ATSS 485-5550

Subject: U--- S--- C--- C---
SY -- XX-XXXXXX-010

This is in response to your memorandum dated September 12, 1990. U--- S--- C--- [C] purchased a manufacturing facility of G--- C--- [G] located in [city], California. We have asserted successor liability against [C] for all of [G]'s tax liability, including tax liability related to other business locations. You believe that [C] can only be held liable for the tax assessment as it relates to the Industry location. We agree.

In the report of discussion of audit findings dated October 3, 1989, the staff's position is set forth as follows:

“[C] is clearly a successor to [G], and our claim is valid. It is not important that some of the audit liability is the result of previous asset sales unrelated to [C]'s acquisition of [G]. The liabilities that exist for [G] could come from any number of sources, i.e. payroll taxes, insurance expense, etc. This is not the determining factor in establishing successor's liability. The primary consideration is that a tax clearance was not requested, and liabilities existed for [G] which became the burden of the purchaser, [C], because they purchased a business or stock of goods.

I must admit that I do not understand the reference to [G]'s liabilities for payroll taxes, insurance expenses, etc. It is true that [G] could have had liabilities arising from many sources, but the only liabilities relevant to the question of successor liability are the sales tax liability and the purchase price liability. And while it is also true that a primary consideration for successor liability is that a tax clearance was not requested, that only establishes that there is a possibility of successor liability, not the amount of that liability.

Subdivision (e) of Regulation 1702 provides that where one person operates several business establishments, each at a separate location, each establishment is a separate "business" and has a separate "stock of goods" for purposes of determining the liability of the successor. "A purchaser of the business or stock of goods of any such establishment is subject to liability as a successor with respect to that establishment even if he does not purchase the business or stock of goods of all the establishments." (Reg. 1702(e).) This clearly establishes [C]'s liability for sales tax arising from the [city] location since it purchased that entire "business." This provision also implies the answer to the question at issue in this case. That is, [C] purchased the business at the [city] location and is the successor for purposes of tax liability arising from that location. Since for purposes of successor liability that location is a separate business, [C]'s liability as a successor arises only with respect to that separate business. Sales taxes owed by [G] with respect to any other location are not part of [C]'s successor liability for purchasing the business at [city].

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