

M e m o r a n d u m**535.0065****To:** Mr. Rick Murphy
--- Compliance, --**Date:** July 13, 1993**From:** Thomas Cooke
Tax Counsel**Subject:** 1. O--- T---, Inc.
SR -- XX-XXXXXXX (Seller)

2. A--- N---, Inc.
SY -- XX-XXXXXXX (Buyer)

The Legal Division has received your memorandum dated June 4, 1993 in which you requested an opinion as to whether A--- N---, Inc. is a "successor" to the O--- T--- pursuant to the provisions of Revenue and Taxation Code sections 6811 and 6812.

The parties have signed an "Asset Purchase Agreement" in which A--- N--- agreed to purchase certain intangible and tangible assets of the O--- T--- for \$8,000,000 payable over a five-year period. The sale is to "close" at or about the time that the O--- T--- ceases publication. The assets to be sold (listed in Attachment A of the agreement) include all intangible assets, all subscription, circulation and advertising sales lists, all microfilm back issues of the T---, related libraries, morgues, and all delivery trucks and newspaper racks used by the T---.

In a letter dated May 3, 1993, L--- S---, controller of A--- N--- G---, stated that "A--- N--- G--- purchased only the O--- T---'s subscription list and the right to their masthead or name. We did not buy their business, assume any of their liabilities, or purchase any of their physical assets." On the letterhead for A--- N--- G---, the O--- T--- is listed as one of the newspapers in the Group.

You state in your memorandum that O--- T---'s current liability is \$265,790.71 with an estimated audit liability of approximately \$50,000.00.

Revenue and Taxation Code section 6811 states:

"If any person liable for any amount under this part sells out his business or stock of goods or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner provides a receipt from the board showing that it has been paid or a certificate stating that no amount is due."

It is the opinion of the Legal Division that A--- N---, Inc. is a “successor or assign” of the O--- T--- within the meaning of Revenue and Taxation Code section 6811. The purpose of the Asset Purchase Agreement is to sell the newspaper’s assets at the time that it ceases publication or “quits the business.” Successor liability should be imposed on A--- N---, Inc., for the tax liability of the O--- T--- if the amount of the liability is not withheld and remitted to the Board from the sums payable to the O--- T---.

TJC:ph

cc: Mr. R. A. Slater
Supervisor of Collections, MIC:55