

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date May 8, 1962

To Ernest H. Johnson, State Tax Assessor Dept. Bureau of Taxation

From John W. Benoit, Asst. Atty. General Dept. " " "

Subject Letter from James F. Cox, dated April 27, 1962, re sales of assets to stockholders of vendor corporation.

Your memorandum of May 4, 1962, is answered below.

The Facts:

The facts stated in Mr. Cox' letter are that "Corperation A will be liquidated and all its assets, including a motor vehicle, transferred to its stockholders. Immediately upon receipt of the assets the stockholders, pursuant to an agreement made by them with Corperation B at the time of the vote to liquidate Corperation A, will sell them all, including the motor vehicle, to Corperation B in exchange for stock of Corperation B."

Mr. Cox states that, in his opinion, there is no question but that the sale of the motor behicle by the stockholders to Corperation B would be taxable.

The Question:

Whether, under the facts, the transfer of the motor vehicle by Corperation A to its stockholders, or the transfer of the motor vehicle by the stockholders to Corperation B, constitute sales so as to give rise to liability under the Maine sales and use tax law?

The Answer:

Beth transfers are taxable events.

The Opinion:

Cox, though of the opinion that a transfer from the shareholders to Corperation B would be a taxable event, is of a different opinion regarding the transfer from Corperation A to the shareholders. He writes that "actually the stockholders are nothing more or less than a conduit. Chapter 17, section 10-A, provides that the tax 'shall be levied upon all isolated transactions involving the sale of motor vehicles' It does not seem

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to me that the liquidation of a corporation and the distribution of its assets to its stockholders involves a sale. Moreover, it seems to me that the transfer would not be subject to use tax because no 'retail sale' is involved."

If a dissolution occurred there would be no sale of the vehicle.

"Sec. 118. On dissolution, estate vests in shareholders.--When a corporation is dissolved, its real and personal estate is vested in the persons who were at the time, shareholders, as tenants in common." Chapter 33, R.S. 1954.

Text material is in accord.

"Stated in another way, the rule is that after the dissolution of a corporation, its property passes to its stockholders subject to the payment of the corporate debts." 13 Am. Jur. Corporation, sec. 1352.

Dissolution destroys the stock and substitutes the thing which the stock represented. According to the given facts there would exist no dissolution. Dissolution does not occur by sale of all the corporate property and settlement of concerns and division of surplus. Merely ceasing to transact business does not work a dissolution. See Tozier v. Woodworth, 135 Me. 49.

A vote by stockholders to liquidate the corporation does not pass title in corporate assets to the stockholders.

Legal title to corporate property is in the corporation and from time to time such property may be transferred to shareholders.

"A corporation is for most purposes an entity distinct from its individual members or stockholders By the very nature of a corporation, the corporate property is vested in the corporation itself and not in the stockholders." 13 Am. Jur., Corporations, sec. 6.

"Stockholders of a corporation have the same right that strangers have to purchase its property"

13 Am. Jur., Corporations, sec. 415.

In conclusion, Corporation A possesses legal title to the motor vehicle which title will be unaffected by the stockholders' vote to liquidate the company. The vote will merely authorize the

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sale of assets by the corporate officers. A subsequent transfer of title to tangible personal property from the corporation to the shareholders is a taxable event when such property is a motor vehicle, providing there is consideration for such transfer. See section 10-A and the definition of "sale" in section 2 of the sales and use tax law. I understand that the consideration to be given by the stockholders is their stock in Corporation A. Later, it is noted, the stockholders of Corporation A are to transfer the vehicle to Corporation B. If, prior to the time of transfer from Corporation A to its shareholders, title is in the corporation and no consideration comes from the shareholders, would Corporation B acquire any title from such shareholders? According to our law does not a sale constitute the passing of consideration?

"A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price."

Chapter 185, sec. 1 of 1954, R.S.

As for your question whether the transfer of the vehicle from the stockholders of Corporation A to Corporation B constitutes a taxable event I am in accord with Mr. Cox that such transaction is a taxable sale.

JWB:epd

STATE OF MAINE

Inter-Departmental Memorandum

Date May 4, 1962

To John W. Bennett, Assistant Attorney General

Dept. Bureau of Taxation

From Ernest H. Johnson, State Tax Assessor

Dept. Bureau of Taxation

Subject Letter from James F. Cox, Esq. dated April 27, 1962

Will you please review the attached letter from Mr. Cox and advise whether, under the circumstances described by Mr. Cox, the transfer of the motor vehicle by Corporation A to its stockholders, or the transfer of the motor vehicle by the stockholders to Corporation B, constitutes sales or as to give rise to liability under the Maine sales and use tax law?

EHJ:j