

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 239

October 28, 1959

CORPORATE REORGANIZATION: DE FACTO MERGER, SALE OF ASSETS

Syllabus:

The exchange of assets for stock in this transaction was a "de facto merger" and therefore was a reorganization within the meaning of Section 23251 of the Bank and Corporation Tax Law.

X Corporation acquired the assets and liabilities of Y Corporation in exchange for over 30% of the shares of X stock. Y distributed the X Corporation shares to its shareholders in exchange for its own outstanding shares. X Corporation amended its return for the income year in question by including the operation of Y Corporation. A letter attached to the amended return indicated a merger had occurred and a statement attached to the return indicated that Y had exchanged its properties for stock of X pursuant to a "Plan of Reorganization." Council for X Corporation have held that this exchange was nontaxable for Federal tax purposes. After the exchange the stockholders of Y retained their same relative interest in the assets of X.

Subsequently X filed claims for refund contending that the acquisition of Y's assets was not through a reorganization.

In San Joaquin Ginning Co. v. McColgan, 20 Cal. 2d 254, the California Supreme Court held that a liberal rather than strict construction should be accorded the reorganization provisions of the franchise tax law. Accordingly, that court concluded that consolidation or merger as a form of reorganization under Section 13(j) (now Section 23251) was not restricted to the statutory variety.

In the Appeal of Anderson-Carlson Manufacturing Company, decided February 18, 1953, the Board of Equalization held, citing Federal tax cases, that such a transaction was a reorganization within the intent of Section 13(j) (now Section 23251).

Although the Board of Equalization decision in the Appeal of Anderson-Carlson was reversed by the District Court for the Second District, 132 CA 2d 825, that decision can be distinguished from the instant case.

There the transaction was consummated without a "plan of reorganization" and there was convincing evidence that a true purchase and sale of assets was intended by all parties to the transaction.

Because of rather substantial factual differences the Anderson-Carlson decision is not applicable in the instant case and reorganization was effected for State tax purposes.

WITTED
BY
AND
IN
WITNESS