

LOEB&LOEBLLP

A LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW
10100 SANTA MONICA BOULEVARD • SUITE 2200
LOS ANGELES, CALIFORNIA 90067-4164
TELEPHONE: 310-282-2000 • FACSIMILE: 310-282-2192

LOS ANGELES

NEW YORK

NASHVILLE

WASHINGTON, D.C.

ROME

WRITER'S DIRECT DIAL NUMBER
213-688-3404

September 11, 1997

SEP 16 1997

Mr. Brian W. Toman
Franchise Tax Board - Legal Branch
P. O. Box 1720
Rancho Cordova, CA 95741-1720

Re: **MTC Proposed Definition of a Unitary Business**

Dear Brian:

Here are my reactions to the inserts and deletions which you made in the November, 1996 draft and sent to Michael Mazerov with your memorandum of July 30, 1997. My line numbers correspond to the handwritten numbers in the margin of your draft.

Line 8. Are there any states which do not require apportionment of business income? If there are none, the insert seems unnecessary.

Line 25. I agree with the first insert but do not understand the second insert "and apportion income to respective states."

Lines 86-87. I agree that there has to be some sharing or exchange of value that is not capable of precise identification or measurement. Otherwise, separate accounting would be acceptable.

Lines 90-97. I think this statement should be retained.

Lines 126-127. I have no comment. This whole paragraph is deleted in my draft.

Line 130. I do not see how the substituted language is an improvement.

Line 132. I agree that the substituted language is an improvement.

Line 137. I agree with the insert.

Mr. Brian W. Toman
September 11, 1997
Page 2

Lines 139-140. I agree with the substitution.

Line 163. I can't see much difference between the original and the changed language.

Lines 221-224. I would retain the sentence. It seems to be an accurate paraphrase of the two sentences in footnote 19 to *Container* which begin, "As *Exxon* demonstrates . . ."

Line 226. I think "implicit" is the better word.

Lines 294-295. I would retain accounting (long mentioned in Reg. 25120(b)(3)) and tax administration, but I would strike financial reporting because it is evidence of nothing more than the kind of oversight that an owner would give to investments whether related or unrelated.

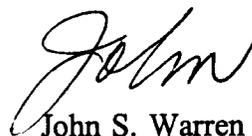
Lines 312, 317 & 318. These changes are acceptable.

Lines 322-325. This paragraph should be deleted (and is deleted in my draft). It conflicts with the statement in II.D.

Lines 336-337. The words sought to be deleted come from Reg. 25120(b)(3). They should be retained.¹

If you would like to discuss the foregoing or any other matters before the September 25 teleconference, please give me a call.

Sincerely yours,



John S. Warren

JSW:jd3
666666666
WAJ13517.L01

cc: Michael Mazerov

¹ In your memo to Mazerov of June 3, 1997, the U.S. Supreme Court's *Woolworth* decision is cited in support of these deletions and the deletions at Lines 294-295. I don't think that decision should be looked to for help in defining a unitary business because the state didn't even put on a case on unitary business. That is the point the FTB tried to make in the California *Woolworth* case. See 160 Cal. App. 3d at 1162.