



**May 17, 2004 (Reissued May 18, 2009)**  
**Pennsylvania Sales and Use Tax**  
**No. SUT-04-017**  
**Motor Vehicles Transferred Pursuant to Merger**

ISSUE:

Is the transfer of delivery trucks from Buyer to Seller at the time of the merger subject to sales and use tax?

CONCLUSION:

No. The delivery trucks acquired by Buyer are not subject to sales or use tax because the trucks were transferred as prescribed by the provisions of the Delaware Revised Uniform Partnership Act.

FACTS:

Buyer and Seller are headquartered out-of-state. To simplify the operating structure and streamline administrative processes, Seller was merged into Buyer following the provisions of the Delaware Revised Uniform Partnership Act. 6 Del. C. §§ 15-101 *et seq.* The name of the surviving entity was changed. Seller owned a number of delivery trucks in the Commonwealth at the time of the merger.

DISCUSSION:

The Tax Reform Code of 1971 (the Code), as amended, imposes a sales and use tax on the purchase price of tangible personal property sold at retail. The Code defines sale at retail as any transfer for a consideration of the ownership, custody or possession of tangible personal property. In 1958, the Commonwealth refused to transfer the registration of vehicles to National Dairy Products Corporation (National Dairy) from its two subsidiaries without the payment of sales tax when the vehicles were transferred to National Dairy because of the merger of the two subsidiaries with National Dairy. National Dairy fought the assessment and won because the Court concluded that the vehicles were transferred "wholly by operation of law." National Dairy Products Corporation v. Gleeson, 16 D & C 2d 390, 405; 72 Dauph 112,\_\_\_ (1958).

The Court noted that the parties had stipulated that the vehicles were transferred as a result of the merger and that the law governing corporate mergers provides that all the property "shall be taken and deemed to be transferred to and vested in the surviving . . . corporation." The Court determined that the transaction lacked consideration because the vehicles were transferred by operation of law and not by the act of the parties where a consideration is agreed upon. The Court also stated that it was aware that there was a plan of merger, but the statute mandated the essential language concerning the asset transfer.

Section 15-902(h) of the Delaware Revised Uniform Partnership Act provides that when the merger becomes effective all property, real, personal and mixed, and all debts due to any of the partnerships as well as all other things and causes of action shall be vested in the surviving partnership and shall thereafter be the property of the surviving business entity.

The transfer of the delivery trucks from Seller to Buyer is not a 'sale at retail' because the vehicle transfer occurred at the time the merger became effective and as prescribed under Section 15-902(h) of the Delaware Revised Uniform Partnership Act. There was no consideration as required by Article II of the Tax Reform Code of 1971 so the transfer occurs without any liability for Pennsylvania sales and use tax.