



BOARD OF EQUALIZATION

BUSINESS TAXES COMMITTEE MEETING MINUTES

HONORABLE JOHN CHIANG, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: OCTOBER 25, 2005, TIME: 9:30 A.M.

ACTION ITEMS & STATUS REPORT ITEMS**Agenda Item No: 1**

Title: Proposed revisions to “Compliance Policy and Procedure Manual (CPPM) Chapter 2, *Registration*,” to clarify whether the Board should issue a seller's permit to a person requesting a seller's permit for the sale of tangible personal property, regardless of whether the sale of such property is lawful in this state.

Issue/Topic:

Should Compliance Policy and Procedures Manual (CPPM) Chapter 2, *Registration*, be revised to clarify whether the Board should issue a seller's permit to a person requesting a seller's permit for the sale of tangible personal property, regardless of whether the sale of such property is lawful in this state?

Committee Discussion:Action 1 – Issuance of Seller’s Permit

A number of interested parties addressed the Committee expressing their support for Acting Board Member Betty Yee’s recommendation to issue seller’s permits for the sale of medical marijuana.

One interested party supported staff’s position because it avoids the issue of self-incrimination. Staff’s recommendation would allow the issuance of a seller’s permit to a person applying for one, regardless of whether the sale is lawful. However, staff’s recommendation would require revisions to the seller’s permit to emphasize that the permit does not authorize the unlawful sale of property since the Board does not condone illegal enterprise.

Following the interested parties’ comments, the Committee Members discussed the three proposals under consideration.

Business Taxes Committee – October 25, 2005

**Agenda Item 1 – Proposed Revisions to Compliance Policy and Procedures
Manual (CPPM) Chapter 2, *Registration***

**Action 1 – Issuance of Seller’s Permit
As Recommended by the Business Taxes Committee**

SALES TAX PERMITS **210.000**

SELLER'S PERMIT **210.010**

Every person desiring to engage in the business of selling tangible personal property, the gross receipts from the ultimate retail sale of which must be included in the measure of sales tax, must file an application for a seller's permit for each place of business in California. The applicant must furnish such security, as the Board deems necessary, in a form acceptable to the Board.

Persons from out of state who maintain a stock of goods in California from which orders are filled are considered "sellers" under the California Sales and Use Tax law, and are required to hold a seller's permit. (Revenue and Taxation Code section 6006.)

A seller’s permit shall be issued to any person who requests one for the sale of tangible personal property the gross receipts from the retail sale of which are required to be included in the measure of sales tax. In general, the person requesting the permit must fully complete a seller’s permit application and provide the information necessary for the Board to administer the state’s sales and use tax laws.

Under the Sales and Use Tax Law, "person" is defined as any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee in bankruptcy, syndicate, the United States, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit. A cooperative association that is not incorporated is treated as a partnership with each member fully liable. (Revenue and Taxation Code section 6005.)

Any administrator, executor, trustee or any other person who operates a business as a fiduciary must file an application for a permit or license. These persons, although under the jurisdiction of the courts, must operate according to the laws of the state.

"Living Trust" is a legal entity set up by persons for estate planning purposes. A person may place his/her assets into a living trust, and upon his/her death, assets may be distributed more quickly to heirs, often bypassing probate entirely. A living trust must have a trustee. Living trusts may operate businesses, and should be treated as a corporation when processing applications. Offices should view copies of legal documents establishing a living trust if any doubt exists whether the trust has been properly formed.

Other types of trusts that are about to engage in business should establish to the Board's satisfaction that they are legally formed. "Legally formed" would include documentation from the Franchise Tax Board, Secretary of State, Superior Court, or other authority, or for living trusts, copies of documents establishing the legal trust. If any doubt exists a permit should not be issued until further investigation is made.