

Issue Paper Number 00 - 055



- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

Proposed Regulatory Changes to Clarify the Definition of the Term “Concessionaire”

I. Issue

Should Regulation 1699, *Permits*, be amended to define the term “concessionaire?”

II. Staff Recommendation

Adopt staff’s proposed amendments to Regulation 1699, *Permits*, to define the term “concessionaire” and clarify the circumstances under which a retailer is liable for tax liabilities derived from unreported sales made by a concessionaire operating within the perimeter of a retail business.

The proposed regulation amendments have no operative date.

III. Other Alternative(s) Considered

Do not adopt proposed amendments to Regulation 1699, *Permits*.

FORMAL ISSUE PAPERIssue Paper Number 00 - 055**IV. Background**

The language regarding concessionaires has remained unchanged since adopted by the Board in Sales and Use Tax Ruling 79 in 1933 with two exceptions. First, clarifying language requiring that a concessionaire obtain a permit for their operations at the specific location of the retailer was added effective July 1, 1939. Second, gender specific language was eliminated with the 1995 statutory revisions of subdivision (e).

Subdivision (d) of Regulation 1699, *Permits*, explains the application of tax to transactions by “concessionaires” as follows:

“A retailer is liable for payment of tax measured by receipts from retail sales made in his or her place of business by operators of concessions therein, unless the concessionaires obtain permits from the board for their operations at that place of business.”

In the event the retailer fails to make a return and remit the amount of tax due with respect to operations of the concessions, the concessionaires must secure permits and file returns together with remittances of the amount of tax due.”

The current regulatory language holds a retailer liable for any unreported sales made by a concessionaire who operates on the premises of the retailer but fails to hold a permit from the Board. However, the regulatory language does not provide a definition of “concessionaire.”

The intent of the concessionaire provision in Regulation 1699 is to require tax accountability by a retailer (the prime retailer) who allows another person (concessionaire) to make retail sales within the prime retailer’s premises in cases where the concessionaire does not hold his or her own seller’s permit, and where, insofar as the public is concerned, the sales might reasonably be believed to be made by the prime retailer. This is often the case when there is use of a common cash register, seating area and/or other common facilities or employees.

Recently, the Board heard a case involving a retailer who owned a bar and allowed a third party to operate a restaurant within the premises of the bar business. In this particular case, there appeared to be evidence of both a lessor/lessee and retailer/concessionaire relationship between the bar owner and the restaurateur. There was a lease agreement for at least some of the audit period, there was a sign on the premises naming only one business entity, and there was only one cash register maintained (by the lessor/bar owner) on the premises to record all sales. Staff conducted an audit and determined that the bar owner was liable for the unpaid taxes related to the restaurant sales since the lessor/bar owner was a retailer who allowed an unpermitted concessionaire to operate on his premises.

During the course of the hearing it was noted that Annotation 410.0100, *Concessionaires*, states that an owner of a building renting space to a lessee/retailer is *not* liable for the lessee/retailer’s tax liability even though the lessor operates a retail business in the same building. While the Board Members did not indicate disagreement with staff’s interpretation of Regulation 1699, they cited the lack of a definition of the term “concessionaire” in Regulation 1699, and noted that there were annotations that appeared to conflict. Of these annotations, Annotation 410.0100 appeared to support the taxpayer’s position. The Board granted the taxpayer’s petition on these grounds and asked that the term “concessionaire” be defined in Regulation 1699 through the Business Taxes Committee.

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The Board's Legal Department has since recommended that Annotation 410.0100 be deleted from the Business Taxes Law Guide as there are underlying facts in the backup letter to the annotation that are not adequately disclosed in the Annotation. In the backup opinion letter for Annotation 410.0100, the owner of a commercial building operated a retail business on the premises while leasing space in the building to other retailers. The opinion concluded that the lessor was not liable for the unpaid taxes of a lessee, as the lessee did not operate its business within an area that, to all intents and purposes, appeared to be operated wholly under the control of the lessor. In other words, the retail locations of the lessor and lessee were not operated in a manner so as to appear to the general public to be one business entity.

A concessionaire relationship may exist in a variety of businesses. Although not limited to any particular industry or type of business, concessionaire relationships often exist in antique malls, bowling alleys, skating rinks, and within any establishment that permits other businesses to serve the needs of its patrons.

A prime retailer is generally held liable for any unpaid taxes incurred by a concessionaire who does *not* hold a permit and who makes retail sales of tangible personal property on the retailer's premises within what reasonably appears to the public to be solely that retailer's business premises. As the concessionaire provisions of Regulation 1699 only apply to a *retailer* who allows a person to operate on his or her premises, in those instances where the retailer is *solely* acting as a landlord, i.e., the lessee is not operating within the perimeter of the lessor's own retail business enterprise, the lessor is generally not held liable for sales made by the lessee. Generally, in these cases, the lessee will be held solely liable for any unpaid sales taxes due.

Additionally, a lessor who is *not* a *retailer* is not liable for taxes on unreported retail sales by a lessee, even if the lessee operates within the perimeter of the lessor's business enterprise. Examples of cases where the lessor is generally not a retailer under section 6012 of the Revenue and Taxation Code, but is solely a landlord, include the hosting of events such as trade shows and swap meets.

Interested parties meetings were held on October 13, 2000 and December 8, 2000 to discuss language that will provide clear guidance with respect to the definition of "concessionaire" and the circumstances under which a business entity (including prime retailers, concessionaires, lessors and lessees) will, and will not, be held liable for the tax due from a concessionaire's unreported retail sales. In addition, a certificate has been created that, if accepted in good faith from the concessionaire, will relieve the business entity from any liability derived from a concessionaire's unreported sales.

V. Staff Recommendation

A. Description of the Staff Recommendation

Staff's proposed revisions to Regulation 1699, *Permits*, provide a definition for the term "concessionaire" and clarify the circumstances under which a retailer is liable for tax liabilities derived from unreported sales made by a concessionaire operating within the perimeter of a retail business. In addition, the proposed language will provide that when a business entity is not a retailer, it cannot be held liable for any liability of a concessionaire operating on its premises. In cases in which a concessionaire is operating within the perimeter of the retail premises of a retailer, the retailer generally will be held dually liable for taxes attributable to any unreported sales of the concessionaire. However, the retailer/business enterprise will be relieved of any liability derived

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from unreported sales made by a concessionaire where either the concessionaire holds a seller's permit or the retailer/business enterprise obtains and retains a statement taken in good faith from the concessionaire that contains the following essential elements:

1. The seller's permit number of the concessionaire.
2. Location for which the permit is issued (must show the concessionaire's location within the perimeter of the prime retailer's location).
3. Signature of the concessionaire.
4. Date.

A suggested format of a certificate is provided as Appendix A of staff's proposed amendments to Regulation 1699. The proposed amendments have no operative date.

A comparison of the current and proposed language of Regulation 1699 is provided in Exhibit 2.

B. Pros of the Staff Recommendation

- Provides clarity to retailers who may not be aware of their liability for tax due on sales made by concessionaires operating within the retail perimeter of a retailer.
- Provides protection from sales and use tax liabilities to retailers who obtain a certificate from concessionaires operating on their premises.

C. Cons of the Staff Recommendation

Requires regulatory change.

D. Statutory or Regulatory Change

No statutory change is required. Proposed revisions to Regulation 1699, *Permits*, are presented as Exhibit 3.

E. Administrative Impact

Staff will be required to notify taxpayers of amendments to the regulation.

F. Fiscal Impact**1. Cost Impact**

There will be no cost impact, as notification to taxpayers will be primarily in the form of an article in the Tax Information Bulletin, the cost of which is included in existing budget expenditures.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

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G. Taxpayer/Customer Impact

Provides a certificate for a retailer to support his or her relief from any sales and use tax liability incurred by a concessionaire operating on his or her premises.

H. Critical Time Frames

The proposed change represents an interpretation of existing statutes, and therefore has no operative date.

Implementation would occur 30 days after approval by the Office of Administrative Law (OAL).

VI. Alternative 1

A. Description of the Alternative

Do not adopt staff's proposed amendments to Regulation 1699, *Permits*.

B. Pros of the Alternative

Current regulatory language remains unchanged.

C. Cons of the Alternative

Does not provide taxpayers with a definition of the term "concessionaire," nor clarify the retailer's obligations with respect to tax liabilities incurred as a result of the operation of concessionaires on his or her premises.

D. Statutory or Regulatory Change

None.

E. Administrative Impact

None.

F. Fiscal Impact

1. Cost Impact

None.

2. Revenue Impact

None.

G. Taxpayer/Customer Impact

None.

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H. Critical Time Frames

None.

Prepared by: Program Planning Division, Sales and Use Tax Department

Current as of: 02/05/2001

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



PROPOSED REGULATORY CHANGES TO CLARIFY THE
DEFINITION OF THE TERM “CONCESSIONAIRE”
REGULATION 1699, *PERMITS*

Staff Recommendation

Adopt staff’s proposed revisions to Regulation 1699, *Permits*, to define the term “concessionaire” and clarify the circumstances under which a retailer is liable for tax liabilities derived from unreported sales made by a concessionaire operating within the perimeter of a retail business. The proposed regulation revision has no operative date.

Alternative 1

Do not adopt proposed revisions to Regulation 1699, *Permits*.

Background, Methodology, and Assumptions

Staff Recommendation:

There is nothing in the proposed amendments to Regulation 1699 that would impact revenues.

Alternative 1:

Alternative 1 has no revenue effect.

Revenue Summary

The staff recommendation has no revenue effect.

The alternative proposal has no revenue effect.

Preparation

This revenue estimate was prepared by David E. Hayes, Research and Statistics Section, Agency Planning and Research Division. This revenue estimate was reviewed by Ms. Laurie Frost, Chief, Agency Planning and Research Division and Ms. Charlotte Paliani, Program Planning Manager, Sales and Use Tax Department. For additional information, please contact Mr. Hayes at (916) 445-0840.

Current as of January 3, 2001

**Proposed Regulatory Changes to clarify the Definition of the Term “Concessionaires”
(Regulation 1699, Permits)**

Comparison of Current and Proposed Language

Current as of February 5, 2001

Action Item	Current Regulatory Language	Regulatory Language Proposed by Staff	Summary Comments
<p>ACTION 1 — Consent Items</p> <p>Adopt amendments to proposed Regulation 1699, <i>Permits</i></p>	<p>Regulation 1699. Permits.</p> <p>(a) In General - Number of Permits Required. Every person engaged in the business of selling (or leasing under a lease defined as a sale in Section 6006(g)) tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and only a person actively so engaged, is required to hold a permit for each place of business in this state at which transactions relating to sales are customarily negotiated with his or her customers. For example:</p> <p>A permit is required for a branch sales office at which orders are customarily taken and contracts negotiated, whether or not merchandise is stocked there.</p> <p>No additional permits are required for warehouses or other places at which merchandise is merely stored and which customers do not customarily visit for the purpose of making purchases and which are maintained in conjunction with a place of business for which a permit is held; but at least one permit must be held by every person maintaining stocks of merchandise in this state for sale.</p> <p>If two or more activities are conducted by the same person on the same premises, even though in different buildings, only one permit is required. For example:</p> <p>A service station operator having a restaurant in addition to</p>	<p>Regulation 1699. Permits.</p> <p>(a) In General - Number of Permits Required. Every person engaged in the business of selling (or leasing under a lease defined as a sale in <u>Revenue and Taxation Code</u> Section 6006(g)) tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and only a person actively so engaged, is required to hold a permit for each place of business in this state at which transactions relating to sales are customarily negotiated with his or her customers. For example:</p> <p>A permit is required for a branch sales office at which orders are customarily taken and contracts negotiated, whether or not merchandise is stocked there.</p> <p>No additional permits are required for warehouses or other places at which merchandise is merely stored and which customers do not customarily visit for the purpose of making purchases and which are maintained in conjunction with a place of business for which a permit is held; but at least one permit must be held by every person maintaining stocks of merchandise in this state for sale.</p> <p>If two or more activities are conducted by the same person on the same premises, even though in different buildings, only one permit is required. For example:</p> <p>A service station operator having a restaurant in addition to</p>	<p>Changes proposed to be consistent with standard regulatory language.</p>

**Proposed Regulatory Changes to clarify the Definition of the Term “Concessionaires”
(Regulation 1699, Permits)
Comparison of Current and Proposed Language
Current as of February 5, 2001**

Action Item	Current Regulatory Language	Regulatory Language Proposed by Staff	Summary Comments
	<p>the station on the same premises requires only one permit for both activities.</p> <p>(b) Persons Selling in Interstate Commerce or to United States Government. A permit is not required to be held by persons all of whose sales are made exclusively in interstate or foreign commerce but a permit is required of persons notwithstanding all their sales (or leases under a lease defined as a sale in Section 6006(g)) are made to the United States or instrumentalities thereof.</p> <p>(c) Persons Selling Feed. Effective April 1, 1996, a permit is not required to be held by persons whose sales consist entirely of sales of feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), or for any form of animal life not of such a kind (nonfood animals) which are being held for sale in the regular course of business, provided no other retail sales of tangible personal property are made.</p> <p>If a seller of hay is also the grower of the hay, this exemption shall apply only if either:</p> <ol style="list-style-type: none"> 1. the hay is produced for sale only to beef cattle feedlots or dairies, or 2. the hay is sold exclusively through a farmer-owned cooperative. <p>(d) Concessionaires. A retailer is liable for the payment of tax measured by receipts from retail sales made in his or her place of business by operators of concessions therein, unless</p>	<p>the station on the same premises requires only one permit for both activities.</p> <p>(b) Persons Selling in Interstate Commerce or to United States Government. A permit is not required to be held by persons all of whose sales are made exclusively in interstate or foreign commerce but a permit is required of persons notwithstanding all their sales (or leases under a lease defined as a sale in <u>Revenue and Taxation Code</u> sSection 6006(g)) are made to the United States or instrumentalities thereof.</p> <p>(c) Persons Selling Feed. Effective April 1, 1996, a permit is not required to be held by persons whose sales consist entirely of sales of feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), or for any form of animal life not of such a kind (nonfood animals) which are being held for sale in the regular course of business, provided no other retail sales of tangible personal property are made.</p> <p>If a seller of hay is also the grower of the hay, this exemption shall apply only if either:</p> <ol style="list-style-type: none"> 1. Tthe hay is produced for sale only to beef cattle feedlots or dairies, or 2. Tthe hay is sold exclusively through a farmer-owned cooperative. <p>(d) Concessionaires. A retailer is liable for the payment of tax measured by receipts from retail sales made in his or her place of business by operators of concessions therein, unless</p>	<p>Changes proposed to be consistent with standard regulatory language.</p> <p>Minor technical revision.</p> <p>Minor technical revision.</p>

**Proposed Regulatory Changes to clarify the Definition of the Term “Concessionaires”
(Regulation 1699, Permits)
Comparison of Current and Proposed Language
Current as of February 5, 2001**

Action Item	Current Regulatory Language	Regulatory Language Proposed by Staff	Summary Comments
	<p>the concessionaires obtain permits from the board for their operations at that place of business.</p> <p>In the event the retailer fails to make a return and remit the amount of tax due with respect to operations of the concessions, the concessionaires must secure permits and file returns together with remittances of the amount of tax due.</p>	<p>the concessionaires obtain permits from the board for their operations at that place of business.</p> <p>In the event the retailer fails to make a return and remit the amount of tax due with respect to operations of the concessions, the concessionaires must secure permits and file returns together with remittances of the amount of tax due.</p> <p><u>For the purposes of this regulation, the term concessionaire is defined as an independent retailer who is authorized, through contract with, or permission of, another retail business enterprise (the prime retailer), to operate within the perimeter of the prime retailer’s own retail business premises, which to all intents and purposes appear to be wholly under the control of that prime retailer, and to make retail sales that to the general public might reasonably be believed to be the transactions of the prime retailer. Some indicators that a retailer is <i>not</i> operating as a concessionaire are that he or she:</u></p> <ul style="list-style-type: none"> • <u>Appears to the public to be a business separate and autonomous from the prime retailer. Examples of businesses that may appear to be separate and autonomous, while operating within the prime retailer’s premises, are those with signs posted on the premises naming each of such businesses, those with separate cash registers, and those with their own receipts or invoices printed with their business name.</u> • <u>Maintains separate business records, particularly with respect to sales.</u> • <u>Establishes his or her own selling prices.</u> • <u>Makes business decisions independently, such as hiring</u> 	<p>Proposed definition of the term concessionaire.</p>

**Proposed Regulatory Changes to clarify the Definition of the Term “Concessionaires”
(Regulation 1699, Permits)**

Comparison of Current and Proposed Language

Current as of February 5, 2001

Action Item	Current Regulatory Language	Regulatory Language Proposed by Staff	Summary Comments
	<p>(e) Agents. If agents make sales on behalf of a principal and do not have a fixed place of business, but travel from house to house or from town to town, it is unnecessary that a permit be obtained for each agent if the principal obtains a permit for each place of business located in California. If, however, the principal does not obtain a permit for each place of business located in California, it is necessary for each agent to obtain a permit.</p>	<p><u>While any statement, taken timely, in good faith and containing all of these essential elements, will relieve a prime retailer of his or her liability for the unreported sales or use taxes of a concessionaire, a suggested format of an acceptable statement is provided as Exhibit A to this regulation. While not required, it is suggested that the statement from the concessionaire contain language to clarify which party will be responsible for reporting and remitting the sales and/or use tax due on his or her retail sales.</u></p> <p><u>In instances where the lessor, or grantor of permission to occupy space, is not a retailer himself or herself, he or she is not liable for any sales or use taxes owed by his or her lessee or grantee. In instances where an independent retailer leases space from another retailer, or occupies space by virtue of the granting of permission by another retailer, but does not operate his or her business within the perimeter of the lessor’s or grantor’s own retail business, such an independent retailer is not a concessionaire within the meaning of this regulation. In this case, the lessor or grantor is not liable for any sales or use taxes owed by the lessee or grantee.</u></p> <p>(e) Agents. If agents make sales on behalf of a principal and do not have a fixed place of business, but travel from house to house or from town to town, it is unnecessary that a permit be obtained for each agent if the principal obtains a permit for each place of business located in California. If, however, the principal does not obtain a permit for each place of business located in California, it is necessary for each agent to obtain a permit.</p>	<p>Lessor that is not a retailer is not liable for the tax liabilities derived from sales made by concessionaires.</p>

**Proposed Regulatory Changes to clarify the Definition of the Term “Concessionaires”
(Regulation 1699, Permits)
Comparison of Current and Proposed Language
Current as of February 5, 2001**

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	<p>(f) Inactive Permits. A permit shall be held only by persons actively engaging in or conducting a business as a seller of tangible personal property. Any person not so engaged shall forthwith surrender his or her permit to the board for cancellation. The board may revoke the permit of a person found to be not actively engaged in or conducting a business as a seller of tangible personal property.</p> <p>Upon discontinuing or transferring a business, a permit holder shall promptly notify the board and deliver his or her permit to the board for cancellation. To be acceptable, the notice of transfer or discontinuance of a business must be received in one of the following ways:</p> <p>(1) Oral or written statement to a board office or authorized representative, accompanied by delivery of the permit, or followed by delivery of the permit upon actual cessation of the business. The permit need not be delivered to the board, if lost, destroyed or is unavailable for some other acceptable reason, but notice of cessation of business must be given.</p> <p>(2) Receipt of the transferee or business successor's application for a seller's permit may serve to put the board on notice of the transferor's cessation of business.</p> <p>Notice to another state agency of a transfer or cessation of business does not in itself constitute notice to the board.</p> <p>Unless the permit holder who transfers the business notifies the board of the transfer, or delivers the permit to the board for cancellation, he or she will be liable for taxes, interest and penalties (excluding penalties for fraud or intent to</p>	<p>(f) Inactive Permits. A permit shall be held only by persons actively engaging in or conducting a business as a seller of tangible personal property. Any person not so engaged shall forthwith surrender his or her permit to the <u>hB</u>Board for cancellation. The <u>hB</u>Board may revoke the permit of a person found to be not actively engaged in or conducting a business as a seller of tangible personal property.</p> <p>Upon discontinuing or transferring a business, a permit holder shall promptly notify the <u>hB</u>Board and deliver his or her permit to the <u>hB</u>Board for cancellation. To be acceptable, the notice of transfer or discontinuance of a business must be received in one of the following ways:</p> <p>(1) Oral or written statement to a <u>hB</u>Board office or authorized representative, accompanied by delivery of the permit, or followed by delivery of the permit upon actual cessation of the business. The permit need not be delivered to the <u>hB</u>Board, if lost, destroyed or is unavailable for some other acceptable reason, but notice of cessation of business must be given.</p> <p>(2) Receipt of the transferee or business successor's application for a seller's permit may serve to put the <u>hB</u>Board on notice of the transferor's cessation of business.</p> <p>Notice to another state agency of a transfer or cessation of business does not in itself constitute notice to the <u>hB</u>Board.</p> <p>Unless the permit holder who transfers the business notifies the <u>hB</u>Board of the transfer, or delivers the permit to the <u>hB</u>Board for cancellation, he or she will be liable for taxes, interest and penalties (excluding penalties for fraud or intent</p>	<p>Minor technical revisions.</p>

**Proposed Regulatory Changes to clarify the Definition of the Term “Concessionaires”
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	<p>evade the tax) incurred by his or her transferee who with the permit holder's actual or constructive knowledge uses the permit in any way; e.g., by displaying the permit in transferee's place of business, issuing any resale certificates showing the number of the permit thereon, or filing returns in the name of the permit holder or his or her business name and under his or her permit number. Except in the case where, after the transfer, 80 percent or more of the real or ultimate ownership of the business transferred is held by the predecessor, the liability shall be limited to the quarter in which the business is transferred, and the three subsequent quarters.</p> <p>Stockholders, bondholders, partners, or other persons holding an ownership interest in a corporation or other entity shall be regarded as having the "real or ultimate ownership" of the property of the corporation or other entity.</p> <p>(g) Due Date of Returns - Closeout Of Account On Yearly Reporting Basis. Where a person authorized to file tax returns on a yearly basis transfers the business to another person or discontinues it before the end of the yearly period, a closing return shall be filed with the Board on or before the last day of the month following the close of the calendar quarter in which the business was transferred or discontinued.</p>	<p>to evade the tax) incurred by his or her transferee who with the permit holder's actual or constructive knowledge uses the permit in any way; e.g., by displaying the permit in transferee's place of business, issuing any resale certificates showing the number of the permit thereon, or filing returns in the name of the permit holder or his or her business name and under his or her permit number. Except in the case where, after the transfer, 80 percent or more of the real or ultimate ownership of the business transferred is held by the predecessor, the liability shall be limited to the quarter in which the business is transferred, and the three subsequent quarters.</p> <p>Stockholders, bondholders, partners, or other persons holding an ownership interest in a corporation or other entity shall be regarded as having the "real or ultimate ownership" of the property of the corporation or other entity.</p> <p>(g) Due Date of Returns - Closeout Of Account On Yearly Reporting Basis. Where a person authorized to file tax returns on a yearly basis transfers the business to another person or discontinues it before the end of the yearly period, a closing return shall be filed with the Board on or before the last day of the month following the close of the calendar quarter in which the business was transferred or discontinued.</p>	

Appendix A

Certification of Permit – Concessionaires

I certify that I operate an independent business at the premises of the following retailer and that I hold a valid seller’s permit to operate at this location, as noted below. I further understand that I will be solely responsible for reporting all sales that I make on those premises and remitting all applicable sales and use taxes due to the Board of Equalization:

Name of retailer on whose premises I operate my business: _____

Location of premises: _____

I hereby certify that the foregoing information is accurate and true to the best of my knowledge:

Certifier’s Signature: _____ Date _____

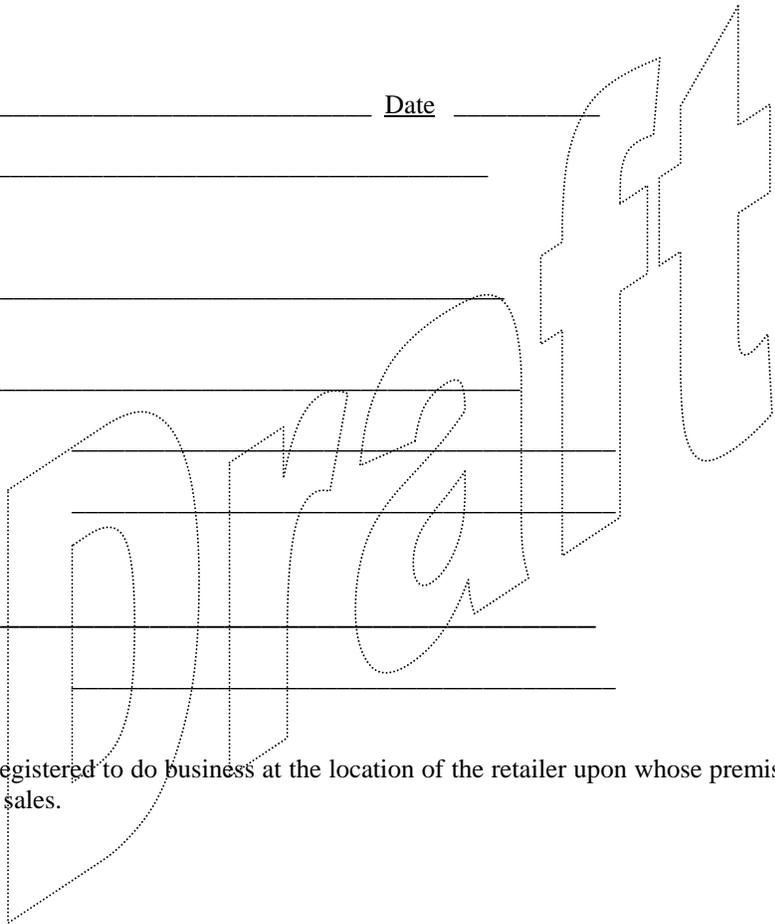
Certifier’s Printed Name _____

Certifier’s Seller’s Permit Number _____

Certifier’s Business Name and Address* _____

Certifier’s Telephone Number _____

*** Please Note:** The certifier must be registered to do business at the location of the retailer upon whose premises he or she is making retail sales.



Regulation 1699. Permits

(a) In General - Number of Permits Required. Every person engaged in the business of selling (or leasing under a lease defined as a sale in Revenue and Taxation Code sSection 6006(g)) tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and only a person actively so engaged, is required to hold a permit for each place of business in this state at which transactions relating to sales are customarily negotiated with his or her customers. For example:

A permit is required for a branch sales office at which orders are customarily taken and contracts negotiated, whether or not merchandise is stocked there.

No additional permits are required for warehouses or other places at which merchandise is merely stored and which customers do not customarily visit for the purpose of making purchases and which are maintained in conjunction with a place of business for which a permit is held; but at least one permit must be held by every person maintaining stocks of merchandise in this state for sale.

If two or more activities are conducted by the same person on the same premises, even though in different buildings, only one permit is required. For example:

A service station operator having a restaurant in addition to the station on the same premises requires only one permit for both activities.

(b) Persons Selling in Interstate Commerce or to United States Government. A permit is not required to be held by persons all of whose sales are made exclusively in interstate or foreign commerce but a permit is required of persons notwithstanding all their sales (or leases under a lease defined as a sale in Revenue and Taxation Code sSection 6006(g)) are made to the United States or instrumentalities thereof.

(c) Persons Selling Feed. Effective April 1, 1996, a permit is not required to be held by persons whose sales consist entirely of sales of feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption (food animals), or for any form of animal life not of such a kind (nonfood animals) which are being held for sale in the regular course of business, provided no other retail sales of tangible personal property are made.

If a seller of hay is also the grower of the hay, this exemption shall apply only if either:

1. The hay is produced for sale only to beef cattle feedlots or dairies, or
2. The hay is sold exclusively through a farmer-owned cooperative.

(d) Concessionaires. ~~A retailer is liable for the payment of tax measured by receipts from retail sales made in his or her place of business by operators of concessions therein, unless the concessionaires obtain permits from the board for their operations at that place of business.~~

~~In the event the retailer fails to make a return and remit the amount of tax due with respect to operations of the concessions, the concessionaires must secure permits and file returns together with remittances of the amount of tax due.~~

For the purposes of this regulation, the term concessionaire is defined as an independent retailer who is authorized, through contract with, or permission of, another retail business enterprise (the prime retailer), to operate within the perimeter of the prime retailer's own retail business premises, which to all intents and purposes appear to be wholly under the control of that prime retailer, and to make retail sales that to the general public might reasonably be believed to be the transactions of the prime retailer. Some indicators that a retailer is *not* operating as a concessionaire are that he or she:

- Appears to the public to be a business separate and autonomous from the prime retailer. Examples of businesses that may appear to be separate and autonomous, while operating within the prime retailer's premises, are those with signs posted on the premises naming each of such businesses, those with separate cash registers, and those with their own receipts or invoices printed with their business name.
- Maintains separate business records, particularly with respect to sales.
- Establishes his or her own selling prices.
- Makes business decisions independently, such as hiring employees or purchasing inventory and supplies.
- Registers as a separate business with other regulatory agencies, such as an agency issuing business licenses, the Employment Development Department, and/or the Secretary of State.
- Deposits funds into a separate account.

In cases where a retailer is not operating as a concessionaire, the prime retailer is *not* liable for any tax liabilities of the retailer operating on his or her premises. However, if a retailer is deemed to be operating as a concessionaire, the prime retailer may be held jointly liable for any sales and use taxes imposed on unreported retail sales made by the concessionaire. Such a prime retailer will be relieved of his or her obligation for sales and use tax liabilities incurred by such a concessionaire for the period in which the concessionaire holds a permit for the location of the prime retailer or in cases where the prime retailer obtains and retains a written statement that is taken in good faith in which the concessionaire affirms that he or she holds a seller's permit for that location with the Board. The following essential elements must be included in the statement in order to relieve the prime retailer of his or her liability for any unreported tax liabilities incurred by the concessionaire:

- The permit number of the concessionaire
- The location for which the permit is issued (must show the concessionaire's location within the perimeter of the prime retailer's location).
- Signature of the concessionaire
- Date

While any statement, taken timely, in good faith and containing all of these essential elements will relieve a prime retailer of his or her liability for the unreported sales or use taxes of a concessionaire, a suggested format of an acceptable statement is provided as Exhibit A to this regulation. While not required, it is suggested that the statement from the concessionaire contain language to clarify which party will be responsible for reporting and remitting the sales and/or use tax due on his or her retail sales.

In instances where the lessor, or grantor of permission to occupy space, is not a retailer himself or herself, he or she is not liable for any sales or use taxes owed by his or her lessee or grantee. In instances where an independent retailer leases space from another retailer, or occupies space by virtue of the granting of permission by another retailer, but does not operate his or her business within the perimeter of the lessor's or grantor's own retail business, such an independent retailer is not a concessionaire within the meaning of this regulation. In this case, the lessor or grantor is not liable for any sales or use taxes owed by the lessee or grantee.

(e) Agents. If agents make sales on behalf of a principal and do not have a fixed place of business, but travel from house to house or from town to town, it is unnecessary that a permit be obtained for each agent if the principal obtains a permit for each place of business located in California. If, however, the principal does not obtain a permit for each place of business located in California, it is necessary for each agent to obtain a permit.

(f) Inactive Permits. A permit shall be held only by persons actively engaging in or conducting a business as a seller of tangible personal property. Any person not so engaged shall forthwith surrender his or her permit to the hBoard for cancellation. The hBoard may revoke the permit of a person found to be not actively engaged in or conducting a business as a seller of tangible personal property.

Upon discontinuing or transferring a business, a permit holder shall promptly notify the hBoard and deliver his or her permit to the hBoard for cancellation. To be acceptable, the notice of transfer or discontinuance of a business must be received in one of the following ways:

(1) Oral or written statement to a hBoard office or authorized representative, accompanied by delivery of the permit, or followed by delivery of the permit upon actual cessation of the business. The permit need not be delivered to the hBoard, if lost, destroyed or is unavailable for some other acceptable reason, but notice of cessation of business must be given.

(2) Receipt of the transferee or business successor's application for a seller's permit may serve to put the hBoard on notice of the transferor's cessation of business.

Notice to another state agency of a transfer or cessation of business does not in itself constitute notice to the hBoard.

Unless the permit holder who transfers the business notifies the hBoard of the transfer, or delivers the permit to the hBoard for cancellation, he or she will be liable for taxes, interest and penalties (excluding penalties for fraud or intent to evade the tax) incurred by his or her transferee who with the permit holder's actual or constructive knowledge uses the permit in any

way; e.g., by displaying the permit in transferee's place of business, issuing any resale certificates showing the number of the permit thereon, or filing returns in the name of the permit holder or his or her business name and under his or her permit number. Except in the case where, after the transfer, 80 percent or more of the real or ultimate ownership of the business transferred is held by the predecessor, the liability shall be limited to the quarter in which the business is transferred, and the three subsequent quarters.

Stockholders, bondholders, partners, or other persons holding an ownership interest in a corporation or other entity shall be regarded as having the "real or ultimate ownership" of the property of the corporation or other entity.

(g) Due Date of Returns - Closeout Of Account On Yearly Reporting Basis. Where a person authorized to file tax returns on a yearly basis transfers the business to another person or discontinues it before the end of the yearly period, a closing return shall be filed with the Board on or before the last day of the month following the close of the calendar quarter in which the business was transferred or discontinued.

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Appendix A

Certification of Permit – Concessionaires

I certify that I operate an independent business at the premises of the following retailer and that I hold a valid seller's permit to operate at this location, as noted below. I further understand that I will be solely responsible for reporting all sales that I make on those premises and remitting all applicable sales and use taxes due to the Board of Equalization:

Name of retailer on whose premises I operate my business: _____

Location of premises: _____

I hereby certify that the foregoing information is accurate and true to the best of my knowledge:

Certifier's Signature: _____ Date _____

Certifier's Printed Name _____

Certifier's Seller's Permit Number _____

Certifier's Business Name and Address* _____

Certifier's Telephone Number

*** Please Note:** The certifier must be registered to do business at the location of the retailer upon whose premises he or she is making retail sales.

