

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION BOARD HEARING SUMMARY**

In the Matter of the Petition for Redetermination )  
Under the Sales and Use Tax Law of: )  
ACTIVATOR METHODS INTERNATIONAL, ) Account Number: SR S OH 97-120674  
LTD ) Case ID 510994  
Petitioner ) Phoenix, Arizona

Type of Business: Retailer of chiropractic devices

Audit period: 10/01/05 – 09/30/08

<u>Item</u>	<u>Disputed Amount</u>
Unreported taxable sales	\$284,771
Tax as determined and protested	\$22,565.36
Interest through 05/31/13	<u>10,906.72</u>
Total tax and interest due	<u>\$33,472.08</u>
Monthly interest beginning 06/01/13	<u>\$112.83</u>

This matter was scheduled for Board hearing in November 2011, but was deferred at the request of the Appeals Division for further review. It was rescheduled for hearing in January 2013 but was postponed at petitioner's request to allow additional time to prepare for the hearing and to arrange to attend the hearing from out-of-state.

**UNRESOLVED ISSUE**

**Issue:** Whether petitioner was required to collect and report use tax to the Board. We find petitioner was required to collect and remit the use tax.

Petitioner, located in Arizona, sells chiropractic devices and, as relevant here, conducts seminars in California. A seller's permit was issued to petitioner pursuant to its application for seller's permit dated August 6, 1997, and that permit remains open. At the seminars held during the audit period, petitioner made sales of chiropractic devices, for which petitioner collected and remitted tax. These sales are not in dispute. Petitioner also took orders for tangible personal property over the Internet and shipped that property from outside California to customers in this state, without collecting

1 or remitting use tax. Other than the seminars, petitioner had no physical presence in California for  
2 purposes of Revenue and Taxation Code section 6203.

3 The Sales and Use Tax Department (Department) determined that petitioner had voluntarily  
4 acquired a California seller's permit and therefore was required to collect and remit use tax with  
5 respect to all sales of tangible personal property shipped to consumers in California. Petitioner  
6 contends that it was not required to collect and remit use tax on its sales shipped into California  
7 because it was not a retailer engaged in business in California as defined by section 6203, without  
8 regard to the fact that it voluntarily held a seller's permit. Petitioner contends that it only obtained the  
9 seller's permit for its sales at the seminars in California, which it describes as trade shows. Petitioner  
10 argues that the requirement under California Code of Regulations, section 1684, subdivision (c), that  
11 holders of a seller's permit must collect and remit use tax, renders the trade show exception in section  
12 6203 meaningless because no out-of-state retailer could qualify for the trade show exception.

13 The Department has not disputed that petitioner's California trade show activities fall within  
14 the exception provided in subdivision (d)<sup>1</sup> of section 6203 (although we find otherwise, as explained  
15 below), but asserts that, since petitioner did voluntarily obtain a seller's permit, petitioner was required  
16 to comply with the requirements imposed on all holders of seller's permits, including the collecting  
17 and remitting of any applicable California use tax.

18 Petitioner submitted its application for seller's permit in August 1997, before the trade show  
19 exception now in subdivision (d) of section 6203 was even adopted.<sup>2</sup> When petitioner obtained its  
20 seller's permit, petitioner represented that it would be engaged in business in this state (the application  
21 indicated that petitioner's sales would begin on November 15, 1997, which was used as the start date  
22 of the permit). Moreover, when petitioner began making sales in California in November 1997, there  
23 was no trade show exception. This means that, without regard to whether petitioner's California  
24 activities qualified as trade show activities, when petitioner first began making sales of tangible  
25

---

26 <sup>1</sup> This provision was designated as subdivision (e) of section 6203 during the audit period, but it was moved to subdivision  
27 (d) as part of amendments to section 6203 in 2011. This summary refers to the provision by its current designation.

28 <sup>2</sup> The legislation adopting this provision was passed by the Legislature on September 13, 1997, signed by the Governor on  
October 2, 1997, and chaptered by the Secretary of State on October 3, 1997, and it became operative on April 1, 1998.

1 personal property in California, it was a retailer engaged in business in California who was required to  
2 hold a seller's permit or to be registered with the Board for collection of use tax and who was required  
3 to remit the applicable tax to the Board with respect to *all* its sales to California consumers (whether  
4 the goods were sold at seminars in California or delivered to California consumers from outside this  
5 state).

6 For periods on and after April 1, 1998, when the trade show exception went into effect, if  
7 petitioner believed that exception were applicable to its business, petitioner had an affirmative duty to  
8 notify the Board of its belief that it qualified for that exception so that its registration with the Board  
9 could be adjusted accordingly, and so that petitioner would be responsible for the tax due only with  
10 respect to its sales at *qualifying* trade shows. We are not aware of any attempt by petitioner to ever do  
11 so, nor are we aware of any communication from petitioner to the Board at any time prior to the  
12 present dispute which would have in any way alerted the Department that, as petitioner now alleges, it  
13 only obtained the seller's permit in 1997 to collect and remit tax on the sales it thought of as "trade  
14 show sales." Since petitioner voluntarily obtained and continued to voluntarily hold its seller's permit  
15 (whether one was required or not), it was required to comply with the requirements imposed on all  
16 holders of seller's permits, including the collecting and remitting of any applicable California use tax.  
17 (Cal. Code Regs. tit. 18, § 1684, subd. (c); *In re Robert L. Reynolds and Donald R. Reynolds* (Board  
18 memorandum opinion) 5/31/07.)

19 Although our analysis above resolves the dispute, there is a more fundamental basis for  
20 denying the petition. Petitioner conducted seminars in California where it taught chiropractors how to  
21 use products it sold. That is, a significant purpose for petitioner's physical presence in this state was to  
22 further petitioner's sales of tangible personal property. As such, petitioner was a retailer engaged in  
23 business in this state, required to collect and remit use tax on *all* its sales delivered to California  
24 consumers (whether delivered in California at its seminars or shipped to California consumers from  
25 outside this state), unless it qualified for the trade show exception of subdivision (d) of section 6203.  
26 As explained in the SD&R, petitioner did not conduct trade shows of the type covered by subdivision  
27 (d) of section 6203. Rather, that provision relates to trade shows conducted by certain non-profit  
28 organizations. That is, the type of trade show covered by section 6203 is one where a non-profit

1 organization sponsors the trade show for persons within an industry to display “industry products or to  
2 stimulate interest in, and demand for, industry products or services, or to educate persons engaged in  
3 the industry in the development of new products and services or new rules and regulations affecting the  
4 industry.” (IRC § 513(d)(3)(A).) The exception in subdivision (d) of section 6203, in turn, relates to  
5 retailers who are members of the industry who participate in the trade show to display their wares or to  
6 otherwise stimulate interest or demand for their industry or educate persons engaged in the industry.<sup>3</sup>  
7 A qualifying trade show under IRC Section 513 is not one where a single person is both the sponsor  
8 and the only participant displaying its wares or educating other persons in the industry. The more  
9 common term for that type of event is “seminar,” which is exactly the term used by petitioner to  
10 describe its visits to California. (See, e.g., SD&R exhibit 5.)

11 We conclude that petitioner voluntarily held a seller’s permit and was therefore required to  
12 comply with the requirements imposed on holders of California seller’s permit, including the  
13 requirement to collect and remit the applicable use tax. We find further that, without regard to its  
14 seller’s permit, petitioner was a retailer engaged in business in this state who did not qualify for the  
15 trade show exception, and who was therefore required to collect and remit the applicable use tax.  
16 Accordingly, we recommend that the petition be denied.

#### 17 OTHER MATTERS

18 None.

19  
20 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III  
21  
22  
23  
24

---

25 <sup>3</sup> Petitioner’s confusion reflected in its opening brief regarding the SD&R’s findings appears to stem from its claim to be  
26 both the sponsor of qualifying trade shows *and* the only retailer making sales at those alleged trade shows. IRC Section  
27 513(d)(3)(A) focuses on the *sponsor* of trade shows while the trade show exception of section 6203 focuses on the *retailer*  
28 who participates in such trade shows. The discussion in the SD&R regarding the applicability of IRC 513 to certain non-  
profit organizations relates to petitioner’s claim to be a *sponsor* of qualifying trade shows and not in the context of its  
participation as a retailer in alleged qualifying trade shows. The profit or non-profit status of a retailer who participates in a  
qualifying trade show is not relevant to whether the retailer qualifies for the trade show exception of section 6203.