

175.0000 COLLECTION OF USE TAX BY RETAILERS—Regulation 1684

175.0005 **Amtrak.** Although sales to or purchases by Amtrak are exempt from sales and use tax under the “Amtrak Improvement Act of 1981,” Federal law section 541(n) does not prevent the Board from holding Amtrak responsible for collection of use tax from its passengers. Since the use tax is imposed on the purchaser (i.e., the passengers) there is no tax directly on Amtrak. 4/22/85.

175.0010 **Army Post Offices (APO) and Fleet Post Office (FPO) Shipments.** A mail order retailer engaged in business in this state is not required to collect California use tax with respect to goods shipped into California to APO or FPO addresses. There is no use by the purchasers of the goods in this state, under the use tax exclusion provided by Revenue and Taxation Code section 6009.1. It will be presumed that the goods purchased are forwarded outside of California. The mail order retailer must retain records showing the names and APO and FPO addresses as they appear on the mailed matter and should retain evidence that the retailer actually mailed the goods to the address shown. 2/27/90.

175.0012 **Attending Trade Shows.** An out-of-state retailer attended five to nine trade shows per year in California where it sold its goods. The retailer reported and paid sales tax on the sales made at the trade shows. The retailer also sold goods to California residents by mail order and did not collect tax.

The attending of trade shows regularly to sell its products is sufficient presence in California to make a “retailer engaged in business in California.” Therefore, the out-of-state retailer must collect the use tax on its mail order sales to California residents. 10/25/95.

(Note: Subdivision (e) was added to Revenue and Taxation Code section 6203, operative April 1, 1998, and further amended operative January 1, 2001, to add a limited exception from the definition of “retailer engaged in business” for specified trade show activities.)

175.0015 **Book Sales by Out-of-State Publisher.** A company is engaged in selling books and printed materials by direct mail solicitation and also through arrangements with school teachers in California. The company sends promotional material through the mail to teachers to pass out to their students. The students take the materials home and together with their parents, select the books they wish to purchase. The students bring the order forms and payment to the classroom where the teacher consolidates the orders and sends the orders and payment to the company. The company ships the books to the teachers who distribute the books to the students.

The teachers represent the company to the students and participate in making the sales. The teachers operate under the company’s authority in that they are authorized to take orders, collect payment, and make deliveries of the merchandise. The use of school organizations to perform the identical activities were regarded as the establishment of an agency relationship (*Scholastic Book Clubs, Inc. v. State Board of Equalization*, 207 Cal.App.3d 734). There is ample basis for finding that the teachers are the company’s agents and that the company is engaged in business in this state. By being engaged in business in this state, the

company is required to collect the use tax on all sales to California customers. 11/19/92.

175.0016 Catalog Distributed to California Consumers. An out-of-state based company sells merchandise featured in a catalog directly to the public. The customers are located throughout the United States, including California. The company now wishes to sell its merchandise on a wholesale basis to California retail stores in which it has no interest. In addition, it plans to distribute the company's catalog through one of the California retail stores.

Where the out-of-state company distributes its catalog through a nonaffiliated California store, the company is considered to be "engaged in business in this state" under section 6203(b). The store displaying the catalogs is viewed as a representative of the out-of-state company that is promoting the sale of the out-of-state company's products. Accordingly, the out-of-state company would be responsible for collecting the use tax from California purchasers who purchase directly from the company. 12/8/87.

175.0017 Collection Agency. An out-of-state mail order business has no personnel in California nor does it maintain any office space in this state. It is proposing to use the services of a collection agency located in California. The agency does not collect funds on behalf of the creditors. Instead, employees attempt to persuade debtors to pay amounts they owe directly to their creditors.

Such debt collection activities are not regarded as being for the purpose of selling, delivering, installing, assembling, or the taking of orders for tangible personal property. Therefore, the out-of-state mail order business would not be considered a retailer engaged in business in this state under subdivision (b) of section 6203 on account of this collection agency's debt collection activities. 8/7/95.

175.0018 Collection of Use Tax by California Department of Corrections (CDC) and/or California Training Facility (CTF). When an inmate of the CDC or CTF orders tangible personal property via a catalog from an out-of-state retailer and has the property shipped to California, the sale does not occur in California and sales tax does not apply. However, the transaction is subject to use tax because the tangible personal property is being purchased for storage, use, or other consumption in California. If the out-of-state retailer collects the use tax from the inmate, the inmate's use tax liability is satisfied.

If the out-of-state retailer does not collect the use tax from the inmate, the inmate must pay the use tax to the State of California. Since CDC and CTF are instrumentalities of the State of California, they can legally facilitate the inmate's payment of his or her use tax liability to the State of California. Therefore, it is appropriate for CDC and CTF to collect an inmate's use tax and remit such tax to the Board of Equalization where the inmate has not paid such tax to its retailer. 2/17/05. (2006-1).

175.0022 Delivery and Installation by Out-of-State Retailer. In 1993 and 1994, an out-of-state retailer made four different sales of telephones to a Texas-based customer. The retailer installed the phones at the customer's locations in California. The retailer's only incursion into California were related to the

installation of the telephones sold to its Texas customers. Since the retailer's representatives entered California under the retailer's authority for the purpose of installing tangible personal property in this state, the retailer is engaged in business in this state under section 6203(b). As such, the retailer must collect the applicable use tax from all of its California customers and pay that tax to the state. 9/22/95.

175.0023 Display at Airport. An out-of-state retailer who sells factory finished vehicles and kits for assembly advertises at airports. Airport displays, which consist of a completed automobile and sales brochure, constitute a sale or sample room or other place of business within the meaning of section 6203. Accordingly, the out-of-state retailer is required to register and collect use tax on its sales to California purchasers. However, if the out-of-state retailer is not a licensed dealer with the California Department of Motor Vehicles (DMV), the retailer is not required to collect tax on vehicles it sells that are subject to use tax. Use tax is collected by DMV at the time of registration. In situations where kits for assembly are sold, the out-of-state retailer is required to collect the use tax. 6/18/82.

175.0037 Independent Contractors Solicit Sales for Resale Only. An out-of-state firm with no locations in California is in the business of wholesaling and retailing apparel. The firm is comprised of two separate divisions. The first is the wholesale division and the second is the retail mail-order division. The divisions keep separate sets of books and records. The executive management is the same for both divisions, although each division has its own operations management team.

The sales for the wholesale business are conducted through independent contractors who periodically solicit sales from California distributors. The firm has no direct control over the independent contractors. The independent contractors are authorized to solicit from only distributors. They are not allowed to solicit from individuals (the end user of the product). The independent contractors are not employees of the firm, but receive a commission on sales. They are able to represent numerous business entities at their own discretion. The independent contractor forwards sales orders to the firm's out-of-state headquarters for acceptance or rejection. All the products are shipped from out of state to California via common carrier.

The sales for retail business are transacted through mail-order solicitations from catalogs and direct mail advertising brochures. The products are distributed from an out-of-state warehouse by common carrier to the California customers.

Under section 6203(b), a retailer is engaged in business in this state if it has any representative or agent in this state for an activity related to sales of tangible personal property. This is true without regard to whether the representatives are only selling to resale customers. (See Annotation 220.0220 (10/26/64).) As such, the firm must collect the use tax from all of its California retail purchasers and pay that tax to this state, without regard to whether the purchases are made through one of the representatives, or entirely by mail or telephone, and without regard to which division makes the sale. (Section 6005.) 7/11/96.

175.0040 **Independent Corporate Division.** Sales made by an independently operated division of a corporation engaged in business in this state must be considered sales made by the corporation, and the corporation is required to collect the use tax when applicable. It is immaterial that the independently operated division is not represented in this state by salesmen or solicitors as long as the corporation itself is so represented. 8/10/64.

[175.0060](#) **Inventory for Resale.** An out-of-state company selling both taxable and exempt products, maintaining an inventory of the exempt products to be sold for resale in this state, is required to register with the Board and collect use tax from purchasers of the taxable product which is shipped from out-of-state to consumers in this state. Since the company is a retailer of the taxable product with a place of business in this state, it is irrelevant that there is no connection between the local place of business and the transactions which give rise to tax liability, and that only an exempt product, is stored in this state for purposes of sale for resale. 5/19/65.

[175.0080](#) **Mail Order Business.** An out-of-state retailer engaged in the mail order business is required to collect use tax on its sales where the orders are sent to a California mailing address and are then forwarded, by its agent, to its out-of-state business location. 4/9/68.

175.0110. **National Bank Order—Personalized Checks.** A national bank is required to collect use tax on sales of personalized checks to depositors. The fact that the name of the printer appeared on the brochures and order forms does not alter the conclusion that it is the bank to whom the depositor gives his order for the checks and to whom he pays the sales price and to whom he looks for performance under the contract for the checks. 3/12/76.

[175.0117](#) **Out-of-State Auctioneer—Collection of Use Tax.** An auctioneer's principal place of business is in New York. The auctioneer is considering opening an office in California, staffing it with employees who may:

Contact California residents who may be prospective sellers of art objects, and invite them to include such objects in auction sales.

Contact California residents who may be prospective buyers of art objects at the auctioneer's New York auction sales, and notify them of the time and place such objects will be available for inspection. Information regarding such object may also be provided, upon request.

Make appraisals of art objects for insurance or probate purposes. These objects would not be sold at auction by auctioneer.

Property sold by the auctioneer to a California resident would be delivered by the auctioneer to the resident at the place of auction or to a common carrier selected by the resident. Under these circumstances, some residents might not bring property they had purchased from the auctioneer to California.

If the auctioneer opens an office in California and if its employees solicit or take orders for art objects, it will be a retailer engaged in business in this state and it will be required to collect California use tax on its sales of property purchased for storage, use, or other consumption in California which occur at its auction

conducted outside California to the extent the property sold is delivered within California.

On the other hand, the auctioneer will not be required to collect California use tax on its sales of property purchased for storage, use or other consumption in California which occurs at its auction conducted outside California where the property purchased is delivered to residents at the place of auction or to a common carrier selected by residents where the auctioneer is not required by the (auction) contract of sale to provide for delivery in California, or delivery to California residents is at points outside of California. 3/25/70.

175.0120 Participation in Sale by Local Agent. A vendor selling tangible personal property for storage, use, or other consumption in California, under circumstances rendering the sales tax inapplicable because of the interstate character of the sale, is required to collect the use tax if he maintains a place of business in this state.

It is immaterial that the local office, agent, or representative of the vendor had nothing to do with the sale. 11/2/53.

175.0125 Local Participation in Sale or Delivery of Goods. Company A issued purchase orders for equipment to Company C, an out-of-state company that maintained a sales office in California. All shipments were CIF Company A's plant site, (CIF is defined in Uniform Commercial Code section 2320 to mean "cost of the goods and the insurance and freight"). Shipments originated from Company D, a foreign manufacturer who is related to Company C. The prices on the purchase orders were specified to include customs duty, handling, insurance, ocean freight, and installation or erection where applicable. The invoices were issued by Company D and specified that the equipment remained the property of Company D until full payment was received. Typically, payment was thirty percent down, sixty percent upon arrival of the equipment in California, and the remainder upon the completion of the installation, erection, or start-up. The invoices also specified that the sixty percent payment was to be made directly to Company C. Installation and start-up services were to be performed by Company C and were to be billed separately, in addition to the purchase price of the equipment.

In order for sales tax to apply, the sale must take place in California and there must be participation by a local office or agent of the seller. (*Norton Company v. Department of Revenue of Illinois*, 340 U.S. 534). In this case, the title clauses in the documents of sale clearly established that the sales occurred in this state. The facts also indicate that Companies C and D acted together; however, whether they acted as a joint venture or whether Company C was acting as an agent for Company D, is not material. The type of "participation" looked for is local participation in the sale or delivery of the goods. In this case, there was no participation either in the sale or delivery of the property by the local agent of Company C. Their participation in the transaction occurred solely in the post-sale negotiations which is insufficient to sustain the imposition of the sales tax. Therefore, the use tax applies and Company A is liable for the tax. 8/11/92.

175.0130 Net Income from Convention and Trade Show Activities. Sales and Use Tax Regulation 1684(b) specifies that retailers engaged in convention and trade show

activities under certain conditions are not considered “retailers engaged in business in this state.” One of those conditions imposes a \$100,000 cap on net income from convention and trade show activities conducted during the preceding calendar year. For purposes of calculating the \$100,000 cap, a retailer’s revenue generated from its convention or trade show activities in this state, such as sales made and orders taken, would be included. Net income consists of gross revenue less ordinary and necessary expenditures to produce those revenues. (See California Code Regulations, Title 18, section 53). 10/8/02. (2003–3).

175.0140 Premiums Offered by Manufacturers. A cereal manufacturer advertises on its cereal boxes that premiums (e.g., jump ropes, space weights) may be purchased for an agreed price, plus proof of purchases (box tops) of the cereal. The cereal manufacturer contracts with the supplier of the premiums that the supplier will (1) purchase the premiums; (2) handle the orders; (3) mail the premiums; (4) collect the price; (5) pay the cereal manufacturer a commission on a per sale basis; (6) handle complaints; and (7) maintain premium quality standards. Orders are addressed by reference to the premium offer (e.g., jump rope offer, space weights offer, etc.) at a post office box. The advertising describes the premium offer as made by the cereal manufacturer. The advertising does not identify the supplier of the premiums.

Given such facts, the cereal manufacturer is holding itself out to customers as the retailer of the premiums (chiefly by product identification) and is liable for the sales tax, or has a duty to collect use tax if nexus with California is present. For the cereal manufacturer to avoid the sale tax or use tax collection duty, the advertising on the cereal box must clearly identify the premium supplier for whom the advertising is performed so that it is clear to customers that the cereal manufacturer is merely providing advertising for an identified premium retailer. 7/21/87.

175.0142 PublicWarehouse. A firm plans to store tires in a public warehouse in California. It will make its sales solely by mail order.

If all sales of goods located in the California public warehouse were sales in interstate commerce, no tax would apply and a seller’s permit would not be required. However, even if all sales from the California warehouse were exempt sales in interstate commerce, the operation of that warehouse in California makes the firm a retailer engaged in business in California. Thus, the firm is required to collect use tax on its sales to California consumers, even if the property was shipped from a warehouse outside California. 10/28/80.

175.0145 Purchase of Tubing. Company A, located in California, purchased tubing from Company B, an out-of-state company who was not registered to do business in California. Company B shipped the tubing to Company C, a California subcontractor, for polishing. Company A picked up the tubing from Company C. No sales or use tax was reported or paid on the purchase. At the time the transaction occurred, Company B had an employee located in California, for the purpose of soliciting sales.

If Company B was not engaged in business in California, at the time of the transaction, Company C who polished the tubing and delivered it to Company A,

would be regarded as the retailer and liable for the sales tax. However, since Company B had an employee located in California, for the purpose of making sales, it was a retailer engaged in business in this state as defined in section 6203. Therefore, the tax due is use tax for which Company A is liable. There was insufficient local participation in the sale or delivery by a local office or agent of Company B for the sales tax to apply. 8/11/92.

[175.0145.800](#) **Refunds.** When a retailer engaged in business in this state collects more use tax from its customers than is due and remits the tax to the state, refunds of the excess plus interest will be paid to the customers rather than to the retailer. 12/17/87; 7/10/96.

175.0145.850 **Registered with the California Department of Agriculture.** If an out-of-state mail order seller of garden seeds does nothing more than register with the California Department of Agriculture, that act alone will not constitute sufficient presence in this state for the mail order seller to be considered a retailer engaged in business in this state under section 6203. As long as the mail order seller is not otherwise engaged in business in this state under section 6203, it will not be considered as engaged in business in California for sales and use tax purposes when registered with the California Department of Agriculture. 5/16/96.

[175.0146](#) **Representative Entered State to Solicit Sale.** An out-of-state manufacturer made its first equipment sale to a California customer in 1995. The manufacturer has no employees residing in California and owns no property in California. Since January of 1991, it has made seven sales calls to California, including three for this sale.

The application of section 6203 is not conditioned on a certain minimum number of visits into this state. Rather, when a retailer, through its employees or representatives, enters California for the specific purpose of engaging in selling activities, the explicit provisions of the statute require that a use tax collection duty be imposed on that retailer. Therefore, as a retailer engaged in business in this state under section 6203, the manufacturer must collect the applicable use tax from its California customer and remit that tax to the state. 9/11/95.

175.0147 **Retailers Engaged in Business in This State.** Retailers engaged in business in this state will be liable for use tax collection under the following conditions:

- (1) If the retailer has actual notice that its customer intends to make the first functional use of the property in California.
- (2) If the retailer delivers the property outside California to a known California resident, there is a presumption under section 6247 that the property was purchased for use in California and the retailer is liable for use tax collection. This presumption may be controverted by a statement in writing, signed by the purchaser and retained by the vendor, that the property was purchased for use at a designated point or points outside this state. This presumption may also be controverted by other evidence satisfactory to the Board that the property was not purchased for storage, use or other consumption in this state. 1/30/90.

175.0148 **Sale Does Not Occur Until Delivery Is Made on Standing Orders.** An out-of-state retailer of vitamins, who advertises in California on a television shopping

system, establishes nexus in California in May. It offers a purchase method whereby a customer may place a “standing order” for the same merchandise to be shipped on a monthly basis for either six or twelve months. Since sales occur upon transfer of title or possession, and title passes when the seller completes its responsibilities with respect to the physical delivery of the property, the retailer is required to collect use tax on shipments made to California consumers on and after May, regardless of the fact that the order may have been placed before April, when nexus was established. 8/25/94.

175.0148.400 Sales to California Customers. After a taxpayer sells his house and moves out of California, he plans to continue selling tangible personal property to California customers from inside California when he re-enters this state in his motorhome. If the taxpayer maintains a business location in this state when making sales inside of California while operating out of or having a connection with that place of business, the taxpayer will owe sales tax on those sales. If the taxpayer does not maintain a California branch, office, outlet, or other place of business, the use tax, rather than the sales tax will apply. After the taxpayer moves out of state, he will continue to enter California for the purpose of selling, taking orders, or otherwise generating business for his company. Therefore, even if his company does not have a California business location, when the taxpayer sells tangible personal property to California purchasers for use in this state, the taxpayer must collect the use tax from those purchases and pay it to this state. 5/2/96.

175.0148.750 Sales of “Personal Picture” Certificates. A California taxpayer sells to customers “personal picture” certificates which are redeemable for personalized picture items such as personalized calendars, business cards with picture, postcards, etc. The taxpayer purchases the certificates from a supplier located out of state. The customer mails the certificate (along with a picture and text) to the out-of-state supplier. The supplier then ships the finished product directly to the customer on the taxpayer’s behalf.

Under these facts, the taxpayer is regarded as the retailer of the personalized calendars, postcards, etc., purchased by the customers. Under this arrangement, title to these items passes from the out-of-state supplier to the taxpayer (and then from the taxpayer to the customer) outside this state when the out-of-state supplier completes its responsibilities with respect to physical delivery of the property. (See Cal. U. Com. Code section 2401.) Since title to this property passes outside this state, the taxpayer’s customers owe use tax measured by the purchase price of the property. The taxpayer is responsible to collect this tax from its customers and remit it to the Board since the taxpayer is the retailer of these goods. (Section 6203.) 7/02/96.

175.0149 Sales of Software, Leases of Modems, and Access to Information System. An out-of-state taxpayer who is engaged in business in California sold application software to hospitals. It also leased modems to hospitals and allowed the hospitals to access its information systems center in its out-of-state location.

As a retailer engaged in business in this state, the taxpayer is required to collect California use tax from a purchaser purchasing the property for use in California

unless the use is exempt or excluded from tax. The hospital's purchase of the software for use in this state is subject to use tax. Also, the purchase of any other miscellaneous items is subject to use tax. Generally, the lease of the modems to the hospitals in this state is subject to use tax. The taxpayer must collect the use tax from the hospital at the time rentals are paid by the lessee (see Regulation 1660). Tax does not apply to the amount of the monthly charge attributable to allowing the hospital access to the information system center. 4/6/94.

175.0150 **Section 6007.** Section 6007 basically provides that the delivery of tangible personal property to a consumer in California by the owner or his agent pursuant to a retail sale made by a retailer not engaged in business in this state is a retail sale by the person making the delivery. If the property is sent to the person making the delivery from an out-of-state point, the person making the delivery will be required to collect the use tax notwithstanding the sale occurred in California. 12/23/75.

175.0153 **Seller's Permits Issued to Out-of-State Retailers.** If a business has no in-state place of business or stock of goods, but nevertheless wishes to collect use tax from its California customers, it should be issued a Certificate of Registration—Use Tax. While the issuing of a seller's permit may cause no harmful consequences, that is not, strictly speaking, the proper course. 5/6/76.

175.0155 **Selling Activities.** A mail order retailer conducts one to five photo shoots per year in California. The photo shoots are of products and models (who could be employees but not usually), with or without props, houses, or other structures in the photos. The resulting photos will be used in catalogs. A photo shoot lasts from one to four weeks and includes one to twelve employees, freelance contractors, and other suppliers of services. The products and props would be valued at between \$5,000 and \$50,000 and are removed from the state after the shoot. Employees come into California prior to the shoot and remain for a period after the shoot for purposes related to the shoot (e.g., site selection).

A retailer whose employees or representatives engage in selling activities in California is engaged in business in this state under subdivision (b) of Revenue and Taxation Code section 6203. The taking of pictures for catalogs is not a selling activity coming within section 6203(b). Thus, if the retailer's employees and representatives engage only in photo shoot activities, it is not engaged in business in California under subdivision (b) of section 6203 as a result of those activities. If the employees or representatives of the retailer do engage in soliciting sales, taking orders, or making contacts for future sales, the retailer would be engaged in business in California under section 6203(b).

The substantial nature of the retailer's presence in California raises the issue of whether it has a location in California under subdivision (a) of section 6203. If so, it is engaged in business in California and must collect use tax from its California shoppers. If the retailer were to arrange a specific location for its employees to work out of, to the exclusion of others, or if an area were identified as the retailer's area (e.g., by posting a sign), the retailer would generally be regarded as having a location in California. Likewise, if the firm had an exclusive license for a photo site, that site would be considered a location of the retailer. On the other

hand, a photo site arranged through a nonexclusive license where others have access during the photo shoot would not be regarded as a location of the retailer. 3/12/97.

175.0160 **Sovereign States, Collection from.** The use tax is a tax on the consumer and it is the retailer's obligation to collect the use tax due from the customer, otherwise the retailer is secondarily liable for the uncollected use tax. The retailer does not have the obligation to collect use tax if the customers are sovereign states because use tax cannot be imposed on other states. 10/15/69.

175.0300 **Telephone Listing Not Nexus.** A retailer's only contact in this State is a local telephone number listed in the "yellow pages." Calls to this number will be automatically forwarded over the public switching network via a 800 service line and will be answered in another state. The organization would be billed by the local Bell office providing the service. The above will not be considered to be a retailer engaged in business in this State for purposes of imposition of the use tax collection responsibilities required by Regulation 1684. The telephone listing, without more, is not sufficient to constitute an office, place of distribution, sales, or sample room. 8/12/82.

175.0315 **Telephone Orders with Shipment by Third Parties.** An out-of-state service organization arranges sales through vendors to its members. The members pay a \$25.00 membership fee to the organization which allows them to call the organization and check the price of merchandise. If the organization's price is cheapest, the member can utilize the organization's system which takes the member's order, contacts the vendor and instructs the vendor to ship the merchandise to the member. The vendor bills the organization who in turn bills the member on his credit card. The invoice from the vendor shows the merchandise being sold to the organization with shipment to the member. In the above situation, the organization is a seller but its activities in this state is not considered sufficient to support a finding that it is a retailer engaged in business in this state.

Virtually all membership fees are generated through direct mail sent from outside California. Its salespersons do not solicit any California firms or members in person. The only solicitation for members is by credit card inserts which are arranged by telephone or mail from out of state. The only limited connection with California is the location of the local telephone number and electronic switching of telephone calls for the organization's shopping service and the fact that one vendor is located in California which is not sufficient to support nexus. Although the organization is not engaged in business in this State and not required to collect use tax with respect to any orders which are delivered from a California vendor to a purchaser in California, section 6007 applies and tax will apply to such sales. 7/30/82.