

BEFORE THE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Petition for Redetermination
Under the Sales and Use Tax Law of:

B & D Litho, Inc.
SC OH 30-690550
Case ID 89000871770

Appearances:

For Petitioner: Steven Gaynor, President
For Sales and Use Tax Department: Warren Astleford, Supervising Tax Counsel
For Appeals Section: John Abbott, Tax Counsel IV

MEMORANDUM OPINION

This opinion considers the merits of a petition for redetermination for the period July 1, 1993 through June 30, 1996. At the Board hearing, petitioner protested a portion of a determination related to its sales to California customers.

Petitioner, an out-of-state corporation, manufactured and sold customer business forms. Petitioner reported its sales at retail to California customers and paid its use tax collections from those customers pursuant to its Certificate of Registration- Use Tax. It had applied for and received its certificate before the audit period, and its certificate was active during the entire audit period. Among other things, petitioner contends that it did not have sufficient activities in this state to be engaged in business (nexus) for purposes of use tax collection during the audit period.

OPINION

California Code of Regulations, title 18 (Regulation), section 1684, Collection of Use Tax by Retailers, sets out the requirements for out-of-state retailers to collect use tax on their retail sales to California customers. Subdivision (a) of that regulation describes some of the activities that will constitute being engaged in business in this state for purposes of use tax collection, pursuant to Revenue and Taxation Code section 6203.

Subdivision (b) of Regulation 1684 provides:

“(b) RETAILERS NOT ENGAGED IN BUSINESS IN STATE. Retailers who are not engaged in business in this state may apply for a Certificate of Registration- Use Tax. Holders of such certificates are required to collect tax from purchasers, give receipts therefor, and pay the tax to the board in the same manner as retailers engaged in business in this state....”

Since petitioner had a Certificate of Registration- Use Tax issued by the Board during the entire audit period, it is irrelevant whether petitioner had sufficient activities in this state to be engaged in business during the audit period. Having voluntarily registered to collect the use tax on its California sales, it was obligated to do so until it both cancelled its certificate and did not engage in activities constituting nexus. The petition should be denied as to this issue.

Adopted at Sacramento, California, on May 31, 2001.

Claude Parrish _____, Chairman

John Chiang _____, Member

Johan Klehs _____, Member

Dean Andal _____, Member

Marcy Jo Mandel _____, Member*

*For Dr. Kathleen Connell, pursuant to Government Code section 7.9.