

## **When Should A Seller's Permit Be Issued to A Buying Company or to a Seller's Website Location?**

Regulation 1699, *Permits*, was recently amended to clarify under what circumstances a seller's permit should be issued to buying companies and to sellers' website locations.

### **Buying Companies**

New subdivision 1699(h)(1) defines a "buying company" as a legal entity that is separate from another legal entity that owns, controls, or is otherwise related to, the buying company and which has been created for the purpose of performing administrative functions, including acquiring goods and services, for the other entity. It is presumed that the buying company is formed for the operational reasons of the entity which owns or controls it or to which it is otherwise related.

#### *Example:*

CA Manufacturing, Inc. has manufacturing plants throughout California. Currently each plant purchases office supplies and other consumable supplies individually. In order to take advantage of volume purchase discounts, CA Manufacturing, Inc. forms a separate corporation, CA Buying, Inc., to purchase supplies for all CA Manufacturing, Inc.'s plants. CA Buying, Inc. purchases the supplies without tax for resale and then sells the supplies to the individual plants.

One outcome of purchasing through buying companies is that the local tax associated with the retail sale of taxable goods is allocated to the location of the buying company.

#### *Example:*

Continuing with the above scenario, when CA Manufacturing, Inc.'s plants purchased their own supplies, the local taxes associated with the purchases were generally allocated to the city and county of the supplier's location (the place where the retail sale was made). By using CA Buying, Inc. to purchase and sell the supplies, all the local taxes are allocated to the city and county where CA Buying, Inc. is located (the place where the retail sale occurs).

The Board will not issue a seller's permit to a buying company if the company is created for the sole purpose of purchasing tangible personal property ex-tax for resale to the entity which owns the buying company or to which it is otherwise related, in order to re-direct local sales tax from the location(s) of the vendor(s) to the location of the buying company. Such a buying company will not be recognized as a separate legal entity from the related company on whose behalf it acts. When the buying company makes sales of tangible personal property to third parties, these sales will be regarded as having been made by the entity owning, controlling, or otherwise related to the buying company.

However, a buying company that is not formed for the sole purpose of re-directing local sales tax, will be recognized as a separate legal entity from the related company on whose behalf it acts. Such a buying company will be issued a seller's permit, and will be regarded as the seller of the tangible personal property it sells or leases.

Subdivision (h)(2) provides that a buying company must either add a markup to its cost of goods sold in an amount sufficient to cover its operating and overhead expenses and/or issue invoices or otherwise account for the transactions to show that the buying company is formed for a purpose other than the redirection of local tax. Of course, like all other taxpayers, buying companies must maintain accounting records as required by Regulation 1698, *Records*.

### **Seller's Website Locations**

New subdivision 1699(i) clarifies that a seller's permit will not be issued to the location of a computer server on which a website resides except when the retailer has a proprietary interest in the server and the activities at that location otherwise qualify for a seller's permit.

### **For More Information**

Although the changes to this regulation became effective on June 14, 2002, the regulation amendments have retroactive effect. For more information or to obtain a copy of Regulation 1669, *Permits*, please contact our Information Center at 800-400-7115, or you may visit our website at [www.boe.ca.gov/sutax/staxregs.htm](http://www.boe.ca.gov/sutax/staxregs.htm).

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