

AEAP

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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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February 8, 1995

I am responding to your letter dated December 29, 1994. You ask how tax applies to your sale of military items.

You collect military items as a hobby. Twice a year you purchase a table at a local military show and sell excess items from your collection to the public. You believe that your sales should be regarded as occasional sales exempt from sales tax because you make the sales infrequently, and do not consider the activity a business. You ask for the clarification of the "Occasional Sale exemption" and under what conditions you qualify as an "Occasional seller."

A retailer's retail sale of tangible personal property in California is subject to sales tax measured by gross receipts, unless that sale is specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale means a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.)

The applicable exemption in your case is Revenue and Taxation Code section 6367 which exempts from sales tax the occasional sale of tangible personal property, except sales of vehicles, vessels, or aircraft. Revenue and Taxation Code section 6006.5(a) defines an occasional sale as a sale of property not held or used by a seller in the course of activities for which the seller is required to hold a seller's permit,

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provided the sale is not one of a series of sales sufficient in number, scope, and character to constitute an activity requiring the holding of a seller's permit.

Any person engaged in the business of selling tangible personal property in California must apply for and obtain a seller's permit from the Board of Equalization. (Rev. & Tax. Code § 6066, Reg. 1699(a).) Even if a person is not otherwise regarded as engaged in the business of selling tangible personal property and therefore not required to hold a seller's permit, the person will generally be so regarded if the person makes 3 or more sales within any 12-month period. (Reg. 1595(a)(4)(A).)

You purchase a table twice a year for the purpose of engaging in the activity of selling tangible personal property. Since you are engaged in the business of selling tangible personal property, you must hold a seller's permit. I note also that it appears that you are making 3 or more sales during any 12-month period. You would be required to hold a seller's permit for such activities even if you did not purchase a table at the military show. Since you are making sales in the course of activities requiring a permit, your sales do not qualify for the occasional sale exemption.

Since you are required to hold a seller's permit pursuant to Revenue and Taxation Code section 6066, you should immediately apply for one at the District Office of the Board of Equalization located at 6150 Van Nuys Boulevard, Room 205, Van Nuys, CA 91409-7735, telephone number (818)901-5293.

If you have further questions, feel free to write again.

Sincerely,



Victor G. Matl
Tax Counsel

VGM:cl

Enclosure

cc: Van Nuys District Administrator