

410.0000 PERMITS—Regulation 1699

See Person. Banks, need for permit, see also Banks and Insurance Companies.

(a) IN GENERAL

410.0010 Auction Sales—Determining Number of Sales. An auction may be a sale of one item or a sale of a “lot” (a number of items) to a single bidder. In either case, the transaction would be regarded as a single sale for purposes of the Sales Tax Law. As is commonly the case, an auction may consist of a number of sales of tangible personal property. The general rule is that each time the hammer drops there has been a sale. This is true whether there are sales to several bidders or several sales to the same bidder. Accordingly, an auction sale by a public administrator of the assets of an estate would require the holding of a permit if there are more than two substantial sales per estate during a twelve month period. Thus, if two substantial sales were made, a seller’s permit is required even though only one or two auctions of the estate’s property are held during a twelve month period. 9/7/84.

410.0011 Autographed Sports Memorabilia. Civil Code section 1739.7 was amended in 1995 to provide that certificates of authenticity must “indicate the last four digits of the dealer’s resale certificate number from the State Board of Equalization.” (Civil Code section 1739.7(b)(6).) The law further provides that “no person shall represent himself or herself as a dealer in this state unless he or she possesses a valid resale certificate number from the State Board of Equalization.” Although the Board of Equalization does not enforce or administer the autographed sports memorabilia law, it has the duty to ensure, under the Sales and Use Tax Law, that persons selling sports memorabilia at locations in this state properly pay California sales tax. 5/3/96.

410.0020 City—Rules Applicable as to Need for and Number of Permits.

(1) All sales made by the City should be taken into consideration in determining whether sufficient sales are made to require a seller’s permit, regardless of whether the sales are made in separate departments of the City. Thus, the general rule that three or more sales in a twelve-month period requires the holding of a seller’s permit means, as applied to the City of “X,” or any other cities, three or more sales irrespective of the fact that one or more of such sales is made by a different department of the city than made the other sales.

(2) Only one permit is necessary for the City on account of operations conducted within the City. Should the City engage in activities elsewhere, such as the operation of a commissary for employees at some area outside the City, a permit should be obtained for such location. If, however, the City desires separate permits for separate activities performed by the City within its limits, there would be no objection to accommodating the desires of the City in this instance.

(3) Transfers between departments of a single City do not constitute sales for purposes of the sales tax any more than in the case of transfers between state agencies, held by the Attorney General in an opinion issued a number of years ago not to constitute sales. The reasoning, equally applicable to cities, was that actually there was no change in ownership. The property would have been owned by the state before as well as after the transfer. The same would be true in the case of between departments of a single municipality, corporation, or other governmental entity. 9/14/51.

410.0040 Concessionaires. The intent of the regulation is to require tax accountability by a retailer operating a business within an area to all intents and purposes wholly under his control, for sales transactions by persons not holding seller’s permits, but which the retailer allows to occur on such area and which, insofar as the public is concerned, might reasonably be believed to be his own transactions. 7/22/57.

410.0060 Concessionaires—Lessor’s Liability. A mere landlord is not subject to the provisions which hold a retailer liable for tax on sales made by concessionaires not holding permits where various charitable organizations use the building for rummage sales. 4/16/64.

410.0067.750 Issuance of Permit to Minors. The Board of Equalization is precluded from issuing a seller's permit to a non-emancipated minor (minor). A minor is defined in Family Code section 6500 as a person under 18 years of age. Legal limitations on the ability of a minor to contract, to sue and be sued, and to delegate power are set forth under Family Code sections 6701 and 7050. There are also practical and physical limitations on a minor's ability to actively engage in or conduct business.

A minor may not generally enter into binding contracts, except under certain circumstances as provided in Family Code sections 6710 and 6712. The limited capacity of a minor to enter into binding contracts remains unaltered by the addition of a co-applicant, e.g., a parent, corporation, or limited liability corporation, on the minor's seller's permit application.

A minor may not be sued in his or her own name, nor may the minor settle his or her own legal claims. Additionally, although a co-applicant on the permit would arguably provide the Board with a responsible person against whom to enforce tax collection obligations, the co-applicant may request to be removed from the minor's seller's permit after it is issued. In such a case, the Board would not be able to effectively enforce payment of tax collection obligations against the minor as the holder of the seller's permit.

A minor is prohibited from being a partner in a California partnership, under Family Code 6701, because he or she lacks the legal capacity to give a delegation of power and a delegation by a partner to the other partners is required for partnership under California law. Accordingly, a minor cannot be a partner in a partnership applying for a California seller's permit.

Since a minor lacks the capacity to enter into binding contracts, to compromise claims, and to delegate authority, and because the addition of a co-applicant does not alter the inability of the minor to do so, the Board is precluded from issuing a seller's permit to a minor regardless of the addition of co-applicants on the application. 8/20/03. (2004-1).

410.0080 Concessionaires. A retailer who leases space on his business premises to concessionaires is responsible for the sales tax with respect to all operations in such premises, except as to those tenants or concessionaires who have obtained seller's permits from the Board. 3/30/53.

410.0105 Conversion of State Bank to Federally Chartered Bank. When a California Corporation reorganizes into a federally-chartered bank pursuant to sections 5701 to 5708 of the Financial Code, it constitutes a transfer of business pursuant to Regulation 1699(f). While the transfer of assets is not a taxable sale because the transfer occurs by operation of law, the new entity is required to obtain a new seller's permit. 6/12/97.

410.0108 Direct Payment Certificate. Under Regulation 1699.5, a person applying for a direct payment permit must have gross receipts from sales of tangible personal property of at least \$75,000,000 and purchases of tangible personal property of at least \$75,000,000 in any calendar quarter during the twelve months immediately preceding the application for permit. At this time, no direct payment permits have been issued by the Board.

Therefore, since the Board has not issued any direct pay permits, a taxpayer's acceptance of a document characterized as a direct payment certificate will not relieve the taxpayer of liability for the applicable tax. 6/10/94.

410.0120 Fixture Installer is required to hold permit and file returns as retailer, even though he purchases his fixtures on a tax-paid basis. 10/19/50.

410.0140 Flea Market Vendors. Individual flea market vendors who rent booths at an established market place are required to obtain a seller's permit. As retailers, their receipts from all sales are subject to sales tax even though they may not return to the market place regularly. 10/9/67; 12/26/67; 5/5/81.

410.0160 Fraud. Even though the person holding the retailer's permit was an agent rather than the principal and was fraudulently induced by the principals of the business to procure the permit in his own

name, the Board has a right to rely on the voluntary act of the permittee and hold him responsible for taxes accruing under such permit. 11/15/63.

410.0166 Inactive Permits. A person is not liable as a predecessor under Regulation 1699 for the unpaid tax liability under the following circumstances.

- (1) The person had no actual or constructive knowledge that he was a permit holder under the permit; therefore, the person would not have “actual or constructive knowledge” that the other person used the permit.
- (2) There is no evidence that he completed any forms necessary to obtain the permit.
- (3) The person’s name is not listed on the permit.
- (4) There is no evidence that the Board staff was even aware of the person’s former connection to the business until he applied for a permit for his new business two years after the tax liability accrued. 11/9/90.

410.0167.500 Issuance of Permits to Emancipated Minors. The Board is precluded from issuing a seller’s permit to a person that has not reached the age of 18 years, except when that person is emancipated. This is because a minor that is not emancipated lacks the legal capacity to enter into a binding contract, give a delegation of power, sue or be sued, or compromise, settle, or adjust a claim. The Board may, however, issue a permit to an emancipated minor since an emancipated minor has the capacity to, among other things, (i) enter into a binding contract or give a delegation of power (ii) sue or be sued in the minor’s own name and (iii) compromise, settle, arbitrate, or otherwise adjust a claim, action, or proceeding by or against the minor. 8/6/99. (2000–2).

410.0170 Jig Grinding and Boring. Jig grinding and boring is an activity resulting in the producing and fabricating of tangible personal property under Regulation 1526 and persons engaged in such activity are required to hold a seller’s permit. 1/8/93.

410.0175 Limited Liability Company. A Limited Liability Company applying for a seller’s permit is only required to provide detailed information, i.e., name, address, telephone number, identification number, for those members that will be managing the Limited Liability Company. Thus, if a corporation is not involved in the management of the Limited Liability Company, its federal income tax number is not required on the seller’s permit application. 3/4/97.

410.0180 Misrepresentation on Application. Incorporators of a business who, after incorporation, represent that they are conducting the business as a partnership when applying for a seller’s permit cannot assert the corporate character as a defense to a determination issued against the partnership. 11/12/64.

410.0190 News Releases and Copywriting. A public relations firm which writes news releases and writes the words for brochures, but does not provide artwork or printing is not engaged in the type of activities that require the holding of a seller’s permit. 8/19/88.

410.0192 Notification of Withdrawal of Partner. Regulation 1699(e) sets forth the manner in which permit holders must give notice to the Board of changes in ownership or discontinuance of a business. The mere publication of notice in a newspaper of general circulation is not sufficient, nor is it sufficient notice of a partnership for a person who was a partner in a business and signed sales tax returns as “partner” to then sign the returns as “owner.” 11/21/72.

410.0193 Notice to Board. A firm operated as a partnership. It incorporated but did not notify the Board of the change. Later, the corporation was adjudicated bankrupt under Chapter 7.

The partners maintain that the issuance of corporate checks to pay taxes reported on returns and the issuance of resale certificates by the corporation was sufficient notice to the Board to relieve it from liability under Regulation 1699.

Neither the issuance of corporate checks nor the issuance of resale certificates by the corporation can reasonably be construed to provide the required notice. The partners, therefore, remain liable for tax under Regulation 1699. 3/12/87.

[410.0194](#) **Notice to the Board.** A partnership was dissolved by written agreement and a notice of dissolution was published in a newspaper of general circulation. No actual notice of dissolution was given to businesses which had direct dealings with the partnership. One of the partners was, by agreement, to continue the business as a sole proprietor and pay all the bills.

A notice of dissolution published in a newspaper does not constitute notice to the Board as set forth in Regulation 1699(e). In *Credit Bureaus of Merced County v. Shipman*, 167 C.A. 2d 673 (1959), the court held that “. . . as to firms having prior credit dealings, with the partnership, actual notice of dissolution is necessary. While publication may be evidence from which actual knowledge could be inferred, publication above would not compel a finding of actual knowledge. A retiring partner is not justified in placing sole reliance upon the publication of notice of dissolution, but should assure himself that existing creditors who have extended credit to the partnership receive actual notice of such dissolution.” As the State of California is, in effect, a creditor, it should receive actual notice of a partner’s leaving the partnership before that retiring partner is relieved of his personal liability for the debts of the partnership. In order to avoid predecessor liability, actual notice must be given to the Board. 7/23/79.

410.0194.850 **Partner’s Liability.** A withdrawing partner will remain liable to the Board for any unpaid taxes or other debts payable to the Board until the partner notifies the Board of such action. Notice to another state agency does not constitute notice to the Board. The withdrawing partner will be liable for any tax liability incurred by the partnership subsequent to the withdrawal and until the Board receives such notice. 12/16/92.

[410.0195](#) **Permits.** Company A and Company B form a partnership, Company C, for the purpose of manufacturing certain building components. C is not located in California, and A holds a California seller’s permit. A is a selling agent for C. As long as A is C’s selling agent, C is a retailer engaged in business in this state and must register with the Board. C is responsible for collecting use tax on retail sales in California and remitting the tax to the state. If, however, C is selling the property to A and A is reselling it on its own behalf, C would not be represented in this state and would not be required to register with the Board. A would be making sales and would be responsible for the payment of sales tax on the gross receipts from retail sales in this state. 3/31/94.

[410.0197](#) **Predecessor and General Partner Liability.** The addition of section 6071.1(a) and section 6487.2(b) to the Sales and Use Tax Law is not effective against tax liabilities which became “due and payable” within the meaning of section 6451 prior to January 1, 1994. Once the liabilities became “due and payable,” the state had a “vested right” to taxes from a permit holder who transferred a business without notice to the Board. In *Estate of Stanford* (1899) 126 Cal. 112, the court held that the Legislature was barred from retroactively reducing taxes where the right to those taxes had vested in the state.

Accordingly, once the taxes became “due and payable,” a predecessor, who transferred a business without notifying the Board, became liable for the tax pursuant to Regulation 1699. Subsequent legislation, which reduces the period over which the predecessor liability extends, is ineffective as to that liability.

Likewise, the section 6487.2 amendments which establish a statutory period in which a determination must be issued against a partner who has withdrawn from a partnership and limits the period of liability is not effective as to liabilities which became “due and payable” prior to January 1, 1994. 4/4/94.

[410.0198](#) **Predecessor Liability.** A husband and wife were co-owners of a coffee service that sold cups and spoons. A determination was issued for the period of January 1, 1982 through January 15, 1983. The wife stated that she had no personal liability for the debts. Documentation submitted by the wife disclosed that she and her husband were separated on September 22, 1980 and filed for divorce proceedings, on December 11, 1980. On March 10, 1981, as part of the divorce proceeding, the court ordered the business transferred to the husband personally. The actual transfer of the business was accomplished on November

6, 1981. The notice of partnership dissolution was not published until March 30, 1982, which was also the date of the final decree of divorce. The seller's permit was revoked on September 24, 1981, for failure to pay a delinquent liability. The husband paid the delinquency plus a reinstatement fee on November 17, 1981, and the permit was reinstated. The husband signed the reinstatement application as "co-owner," so the Board's records continued to show the entity as a husband/wife co-ownership.

While the permit was inactive, the wife had transferred her interest in the business to her husband. Eleven days later, the husband reinstated the permit. There is nothing in the record to indicate that the wife had actual or constructive knowledge that the husband reinstated the predecessor permit rather than obtaining a new permit in his own name. Lacking such knowledge, the wife cannot be held liable as a predecessor.
4/13/89.

410.0200 Ownership Change Requiring New Permit. Change in general partners requires application for new permit number. 6/19/52.

410.0203 Registration of Limited Partnership. Since the adoption of the California Revised Limited Partnership Act, operative 7/1/84, limited partnerships are not to be registered in the partnership name, as it is a "dba" and should be shown as such on the seller's permit. The names of all general partners should be shown on the application as owners, with a list of all limited partners included for file information. A new permit must be issued each time there is a change in the general partners of a limited partnership, but not if the change is in limited partners only. 5/14/87.

410.0205 Retailer—Minimum Sales. Absolute uniformity or equality in the application of tax measures is not required if a distinction is based on a rational basis (*Ladd v. State Board of Equalization*, 31 Cal.App.3d 1009.) Therefore, an administrative practice of treating persons making retail sales of less than \$150 per month as consumers, while persons in the same situation who make retail sales in excess of \$150 per month are treated as retailers, is not a denial of equal protection of the law. 12/18/75.

410.0209 Separate Entity Permit Requirements. Corporation A is wholly owned by Corporation B and exists as a corporation in name only. It has no employees of its own and has no bank accounts. Ninety-nine percent of its business is with its parent and it draws no profit therefrom. Corporation A charges no mark up on sales between A "and its customers" (its parent and its accommodation customers). Corporation B pays for much of the expenses to operate Corporation A and Corporation A does not actually generate any revenue for itself.

It is apparent that Corporation A has failed to comply with the basic requirements for obtaining and holding a seller's permit. Under the facts in this case, the Board will not regard Corporation A as a separate person from Corporation B unless it actually creates a separate identity, with employees, accounting systems, and bank accounts. It must also add a mark up on its sales, and invoice all customers. Otherwise, no seller's permit will be issued to Corporation A and the Board will disregard its existence for purposes of sales and use taxes. 11/4/96.

410.0212 Single Lease and Subsequent Sale of Leased Assets. A limited partnership has its main office located in Illinois. Its principal business is buying real property for long term investment purposes and then leasing the property. For the period in which the following transaction occurred, it did not have a California seller's permit or file California sales and use tax returns.

In mid 1971, the partnership purchased the assets of a hotel with a bar and restaurant in California from a finance company which had acquired it by foreclosure or repossession. Although the hotel assets included some tangible personal property in addition to the realty, the partnership did not pay sales tax reimbursement to the seller or use tax to the State with respect to the purchase. Simultaneously with the purchase or soon thereafter, the partnership leased all of the assets to the same corporation that had previously owned the hotel. The Corporation was given full authority and responsibility for operating the business and presumably held a seller's permit for such operations.

In December 1973, the partnership sold all the hotel assets to an unrelated company. Although the partnership made only two sales in any 12 month period, the lease of the hotel's fixtures and equipment and its subsequent sale, the two sales are sufficient to require the partnership to hold a seller's permit. Under section 6066, a person must hold a permit if it is "engaged in business" as a seller regardless of the number of sales. In this situation, the partnership was engaged in the business of leasing tangible personal property. The lease of the hotel assets, including the tangible personal property, was unquestionably entered into with the object of gain, benefit or advantage, and this comes precisely within the statutory definition of "business." The ongoing nature of the lease also indicates that it was a business activity rather than a casual or isolated transaction. While leasing tangible personal property may not have been the partnership's principal business, it was nevertheless a business activity and required the holding of a seller's permit.

As regards to Regulation 1595 which states that persons who make three or more sales are "generally" required to hold a permit, it does not state that persons who make fewer sales are necessarily exempt from the permit holding requirement. Also, the lease is not an occasional sale under Regulation 1595 which is defined to include a "sale of property not held or used by a seller in the course of activities for which he is required to hold a seller's permit . . ." Since the partnership's lease of the hotel assets required the holding of a seller's permit, the lease was not an occasional sale under this section. For the same reasons, the partnership's sale of the hotel assets was not an occasional sale. That the partnership owned a hotel and was engaged in a leasing business in California provided sufficient nexus for taxation. 12/9/80.

410.0214. Subsidiaries Required to Hold Separate Permits. A parent company and each of its subsidiaries are persons and sellers within the meaning of sections 6005 and 6014. section 6452 provides that every seller or person liable for sales or use tax is required to file a return with the Board. There are no statutory provisions authorizing the combination of returns or the consolidation of filing by separate but related companies. The parent company and each of its subsidiaries is required to hold a permit and file its own sales and use tax returns. 7/30/97.

410.0218. Trust Incorrectly Using Trustor's Permit. A grantor trust has purchased vehicles for the purpose of leasing and has issued a resale certificate, using the beneficiary/trustor's seller's permit number. Tax has been reported on rental receipts on all vehicles, using the trustor's Sales and Use Tax return as a conduit of payment.

This procedure is incorrect. The trust may not issue a resale certificate using another entity's seller's permit number, nor report tax liability on another's tax return. The trust should obtain its own permit and issues certificates, where appropriate, with its own permit number shown. 6/3/89.

410.0220. Tour Groups. A tour agent rents a bus on a weekly basis and takes groups of people to three venues. Each group stops at a hotel for lunch. The charge per person for the tour includes transportation, luncheon, and anything else that may be done during the day (i.e., breakfast danish while on the bus). Monies due the bus company and restaurant are paid in advance.

The above activities will not require the tour agent to hold a seller's permit since the company is not making any sales to the groups patrons of tangible personal property which are subject to sales and use tax. However, if for example, the company were to serve meals to the group instead of taking the group to a hotel, the company would be required to hold a seller's permit. 4/28/82.

410.0240. Ownership Change Requiring New Permit. Where permit is in name of "X, a Business Trust," a reduction in the number of trustees does not result in change of entity requiring a new permit as the business trust continues as the same entity under section 6005. 7/9/51.

(b) PERSONS MAKING NONTAXABLE SALES

410.0246. Artificial Eyes. A company, whose sole function is to manufacture and fit artificial eyes on patients referred by ophthalmologists, questioned whether it is required to register as a seller and hold a seller's permit. All fittings are done pursuant to the order or prescription of an ophthalmologist. The

question was in light of the October 1, 1977 amendments to section 6369 and Regulation 1591 exempting sales of artificial eyes and their replacement parts.

Prior to October 1, 1977 ophthalmic or ocular devices or appliances were specifically excluded from the term “medicines.” Effective October 1, 1977, section 6369 was amended to add “artificial eyes or their replacement parts” to the term “medicines.” As a result of this amendment, artificial eyes or their replacement parts which are furnished pursuant to a written order of a physician shall be deemed to be dispensed on prescription and their charges are exempt from tax when furnished to patients by companies such as this one. However, under Revenue and Taxation Code section 6018, to the extent that this company only furnished artificial eyes, eye markers, and sclera lenses pursuant to the written order or prescription of an ophthalmologist, it does not sell tangible personal property the gross receipts of which are subject to tax. As such, this company will not be required to register with the Board as a seller. 4/21/81.

410.0250 Persons Making Nontaxable Sales. Persons selling “medicines,” as that term is defined in section 6369(b) of the Revenue and Taxation Code, are required to hold seller’s permits even though all of their sales may be exempt under section 6369(a) of the code. “Medicines” are not a property of a kind the gross receipts from the retail sale of which are not subject to the tax. It is the circumstances under which the property is sold which may result in an exemption. 11/9/71.

410.0280 Containers and Labels. Person selling containers and labels, even under exempt conditions, is required to hold a permit. His sales are of property not exempt because of its nature, but because of a particular use. 5/27/52.

410.0300 Fertilizer. A person selling fertilizer is required to hold a seller’s permit even though all sales may be exempt as sales for resale or for application to land, the products of which will constitute food for human consumption.

The fact that under certain circumstances retail sales of fertilizers are taxable requires the holding of a seller’s permit pursuant to section 6066 requiring all sellers to hold permits and section 6014 defining seller. Inasmuch as persons selling fertilizer are “sellers,” they are under section 6015 “retailers” with respect to any retail sales made, that section providing in part that the term retailer includes “Every seller who makes any retail sales or sales of tangible personal property.” 3/12/52.

410.0320 Fish Market selling only fish for human consumption is tax exempt and needs no seller’s permit. 10/17/50.

410.0325 Installing Customer Provided Signs. A contractor who only installs customer provided signs that are classified as “fixtures” under Regulation 1521 and does not perform any fabrication of the sign prior to installation would not be required to obtain a seller’s permit. If, however, the contractor performs fabrication labor prior to installation or furnishes property which is not considered “material” within the meaning of Regulation 1521, the contractor would be required to hold a seller’s permit and report and pay sales tax to the Board on such charges. 1/24/94.

410.0340 Polishers engaged exclusively in the business of polishing metal articles for persons who resell the polished articles are not required to hold a seller’s permit. 5/17/50.

410.0360 Sales for Resale. Corporation A, licensed to do business in California, manufactures an item outside of California and stores it in a warehouse in California. Corporation B, licensed in California, from time to time purchases the items from Corporation A and sells it to various California distributors.

Neither corporation incurs sales tax liability as sales by each are sales for resale. No use tax liability is incurred if the property is at all times being held for sale and not used or consumed by either corporation in this state.

Both corporations should, however, hold a seller’s permit even though all sales are sales for resale. 3/21/55.

410.0380 **Sales Made Exclusively for Foreign Export.** A seller's permit is not required where all a retailer's sales are made for foreign export. In this case the retailer should issue a resale certificate to his vendors, in the form set forth in Regulation 1668, noting on the certificate that a seller's permit is not required because of "all sales are for export." 12/14/89.

410.0390 **Sales of Unprocessed Wool.** An agricultural cooperative is required to hold a seller's permit on sales of raw wool and goat hair at retail even though such products cannot be used until they are processed. 9/3/77.

410.0395 **Sales to U.S. Government.** Taxpayer performs services for the U.S. Navy. It is required to purchase non-construction materials for the government's warehouse inventory. Title to the property purchased passes to the Navy upon receipt by taxpayer and prior to any use by it.

It is not necessary that the seller maintain a stock of goods in order to be a seller required to hold a permit. Further, a seller is required to hold a permit even though all sales are made to the U.S. Government. (Regulation 1699(b).) 2/22/90.

410.0410 **Trusts.** In order to obtain a permit in the name of the trust, the trustee must establish the existence of a trust. Generally, an oral declaration of the trustee, standing alone, is not sufficient evidence.

Satisfactory evidence that the trust exists is necessary for issuance of a seller's permit in the name of the trust. This should include evidence of a bank account in the name of the trust, a copy of the lease contract for a business premises by the trust, proof of the purchase of resale inventory by the trust, written authorization of the person applying for the permit acting on behalf of the trust, or any other similar evidence. 8/8/89.

410.0900 **Veteran's Exemption.** The veteran's exemption provided under section 16102 of the Business and Professions Code applies only to business license fees and other charges. Its application does not extend to state sales taxes. Also, since there is no fee for a seller's permit, section 16102 is not relevant to the issuance of a seller's permit to a veteran. 6/22/95.