

M e m o r a n d u m**220.0270**

To: Mr. Alan Giorgi
Sacramento District Compliance

Date: February 10, 1995

From: Kelly W. Ching
Staff Counsel

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Subject: **Use Tax, Out-of-State Vendor**

This is in response to your memorandum dated January 17, 1995 regarding the application of use tax to certain activities of an out-of-state retailer of custom-made knives.

You state that the Montana retailer plans to attend one show in California this year, in order to solicit orders for the knives. You explain that no tangible personal property will change hands at the show, and that at the time of each order, the retailer will either take a down payment or payment in full, or will bill the customer later. The retailer will then go back to Montana, make each knife, and send each knife to the buyer through the mail.

As you know, retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) When sales tax does not apply, such as when sales take place outside of California, the use tax, measured by the sales price of the property sold, applies to the use of property purchased from a retailer for storage, use, or other consumption in California. (Rev. & Tax. Code §§ 6201, 6401, Reg. 1620.) Although the purchaser owes the use tax, a retailer engaged in business in this state is required to collect the use tax from the purchaser and pay it to this state. (Rev. & Tax. Code § 6203.)

"Retailer engaged in business in this state" includes any retailer having any representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing, assembling, or the taking of orders for any tangible personal property. (Rev. & Tax. Code § 6203(b).)

Since the Montana retailer will visit California for the purpose of soliciting orders for the knives, the retailer will be engaged in business in California under Revenue and Taxation Code section 6203(b). This is true even if the retailer visits California no more than once per year, and even if no tangible personal property changes hands while the retailer is in California.

You ask whether there are distinctions for tax purposes among trade shows, craft shows, and conventions. As long as the purpose of the retailer's visit is to solicit or take orders for tangible personal property, the retailer must collect the applicable use tax from all of its California purchasers and pay the tax to this state, regardless of whether the visit is to a trade show, craft show, or convention.

On the other hand, if a retailer were to visit California in order to attend a training seminar and not in order to sell, deliver, install, assemble, or take orders for any tangible personal property, then as long as that retailer was not otherwise engaged in business in this state, that visit would not bring the retailer within section 6203(b).

You have cited Business Taxes Law Guide Annotation 220.0240 (7/25/58). That annotation is being (or has been) deleted. The discussion above represents our current interpretation of section 6203(b). If you have further questions, please feel free to write again.

KWC:cl

cc: Out-of-State District Administrator