

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

175.0012

BUSINESS TAXES APPEALS REVIEW SECTION

In the Matter of the Petition)
for Redetermination Under the) DECISION AND RECOMMENDATION
Sales And Use Tax Law of:)
)
P--- T--- & F--- F---) No. SS -- XX-XXXXXXX-010
)
Petitioners)

The Appeals conference in the above-referenced matter was held by Staff Counsel Michele F. Hicks on October 18, 1995 in Sacramento, California.

Appearing for Petitioners:

N--- S---
Production Engineer

Appearing for the
Sales and Use Tax Department

Jack Warner
District Principal Auditor

Type of Business:

Manufacturer, distributor and
retailer of cross stitch
equipment, tools and
accessories

Protested Item

<u>Item</u>	<u>State, Local and County</u>
A. Unreported Mail Order Sales	\$77,761

Petitioners' Contentions

1. Petitioners do not have sufficient contact with the State of California to require collection of the use tax on mail order sales.
2. Petitioners should not have to pay interest on the assessment.

Summary

During the audit period, petitioners operated as a partnership, dba "T---'s T---", which manufactured, distributed, and retailed cross stitch equipment, tools, and accessories. Petitioners' business is located in Washington.

"During the audit period, petitioners attended five to nine trade shows per year in California where they sold their goods. Petitioners reported and paid sales tax on the sales made at these trade shows. Petitioners also sold goods to California residents by mail order and did not collect tax. The audit staff assessed tax on these sales. Petitioners agree that tax is due on sales made in California at the trade shows, but contend that they should not have to collect tax on their mail order sales to California residents.

Analysis and Conclusions

Revenue and Taxation Code Section 6203 provides that every "retailer" engaged in business in this state" who sells tangible personal property for storage, use, or other consumption in this state, shall collect use tax from the purchaser. Section 6203(b) defines a "retailer engaged in business in this state" as:

"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." (Underlined words added to statute in Stats. 1992, Ch. 902, operative January 1, 1993.)

In order for a retailer to be considered engaged in business in this state, the retailer must have a least a minimal physical presence in this state. (Quill Corp. v. North Dakota (1992) 112 S. Ct. 1904.) Even if a company does not maintain any place of business in California, it is a retailer doing business in California if it sends salespeople or other representatives to this state to promote or sell its products. (National Geographic Society v. State Board of Equalization (1977) 430 U.S. 551; General Trading Co. v. State Tax Commission (1943) 322 U.S. 335.)

In the present case, petitioners regularly came to trade shows in California to sell their products. This is sufficient presence in California to make them a “retailer engaged in business in California.” Therefore, they must collect the tax on their mail order sales to California residents.

Petitioners contend that they did not know they were liable for the tax on their mail order sales and, therefore, they should not have to pay interest accrued prior to the Notice of Determination.

Revenue and Taxation Code Section 6482 states that the amount of the determination “shall bear interest” from the date the tax becomes due until it is paid. There is no provision which excuses petitioners from payment of interest under the circumstances of this case.

Recommendation

We recommend that this matter be redetermined without adjustment.

MICHELE F. HICKS, STAFF COUNSEL

October 25, 1995

Date