

**STATE BOARD OF EQUALIZATION**

LEGAL DIVISION (MIC:82)  
450 N STREET, SACRAMENTO, CALIFORNIA  
(P. O. BOX 942879, SACRAMENTO, CA 94279-0001)  
TELEPHONE: (916) 322-2976  
FAX: (916) 323-3387

JOHAN KLEHS  
First District, Sacramento

DEAN ANDAL  
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.  
Third District, San Diego

BRAD SHERMAN  
Fourth District, Los Angeles

KATHLEEN CONNELL  
*Controller, Sacramento*

BURTON W. OLIVER  
*Executive Director*

September 11, 1995

Mr. J--- C. G---, CPA  
G--- S--- & P---  
XXXXX NE Xth Street, Suite XXX  
---, WA XXXXX

**Re: Unidentified Taxpayer**

Dear Mr. G---:

This is in response to your letter dated July 13, 1995 in which you request a ruling regarding the application of tax to the business activities of your client. I note that the only basis for the Board to relieve a person of otherwise properly due taxes is pursuant to the provisions of Revenue and Taxation Code section 6596. To come within the provisions of that section, the taxpayer must have reasonably relied on the Board's written advice which was in response to a written request for advice that disclosed all relevant facts, including the identity of the taxpayer. Since your client is not identified, this opinion does not come within the provisions of section 6596.

You state:

"Our client (T) is a corporation incorporated and physically located in the State of Washington. T is engaged in the business of designing, manufacturing and supplying switch gear (and other components not relevant to this case) for hydro electric energy generating systems. T is not registered to do business in the State of California. T has filed California income tax returns for fiscal years ended March 31, 1993 and March 31, 1994 paying the minimum tax. These filings now appear to have not been required and were filed unnecessarily. This is T's first sale to a customer in California; therefore, this is the first equipment T has shipped into California. T has no employees resident in California and owns no property in California. The T salesman does not regularly visit California. Since January of 1991, he has made only 7 sales calls to California, including three for the project in question.

“T responded to a request for proposal from the California Department of Water Resources (DWR) for ‘Furnishing Control Switchboards to the Mojave Siphon Project.’ T was the low bidder and was awarded the contract in September 19XX.

“The contract called for T to perform the following tasks:

1. Engineer and assemble a Control Switchboard and ship same to the customer (DWR) in the State of California. Note that all engineering and assembly has been performed in the State of Washington (with the exception discussed at 5 below) and that the equipment (personal property) has been shipped via common carrier.
2. Purchase certain spare parts for the Switchboards and Annunciator System and ship same to the customer (DWR) in the State of California.
3. Liaison services-meetings requested by the DWR to coordinate various items in the project. This was accomplished in a one-day meeting in California by T’s Chief Engineer.
4. Regular and overtime services of an erecting engineer requested by the DWR. Note that this engineer, on site in California for one week, provided only technical directions to the contractor installing the switchgear.
5. After construction of the switchgear in the State of Washington and shipment by common carrier to the customer in California the DWR requested certain change orders. Portions of these change orders were required to be performed on site and it became necessary for two of T’s servicemen to travel to California to perform certain rewriting functions. One serviceman traveled to California on two separate trips for a total of three weeks and the other serviceman traveled only once for one week.

“Based on our understanding of the rules that govern interstate commerce and the applicable California statutes, regulations and cases, we believe:

- T is not subject to California sales tax on this transaction.
- DWR is liable to pay California use tax on the transaction.
- T is not obligated to collect such use tax.”

#### DISCUSSION

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.) 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.)

You state that T's sales to DWR occurred in Washington. Since the sales took place outside of California, the use tax, rather than the sales tax, is applicable. DWR owes use tax on its use of the equipment in California unless the use is exempt from tax by statute.

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).)

You explain that a salesman for T entered California for the purpose of making sales calls; therefore, T is engaged in business in this state under subdivision (b) of section 6203. You make a point of emphasizing that the salesman "made only 7 sales calls" to California. Please note that the application of section 6203 is not conditioned on a certain minimum number of visits into this state. Rather, when a retailer, through its employees or representatives, enters California for the specific purpose of engaging in selling activities, the explicit provisions of the statute require us to impose a use tax collection duty on that retailer. As a retailer engaged in business in this state under section 6203, T must collect the applicable use tax from DWR and all its other California purchasers, and remit that tax to this state.

You indicate that T is not registered to do business in California. Since T is engaged in business in California, T must apply for a seller's permit. Please contact our Out-of-State District Office at (916) 322-2010 to request an application. For your information, I am enclosing a copy of the Board's Pamphlet No. 73, entitled "Your California Seller's Permit."

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

Sincerely,

Kelly W. Ching  
Staff Counsel

KWC:cl

Enclosures ( Rev. & Tax. Code § 6203, Pamphlet No. 73. )

cc: Out-of-State District Administrator (OH)