



STATE BOARD OF EQUALIZATION

October 9, 1967

Dear Mr. X-----,

Your letter of September 26, 1967 addressed to Mr. Saltzstine has been referred to the Board's legal staff for reply.

In your letter you ask to be advised of the authority for Mr. Saltzstine's position that every seller of tangible personal property is engaged in the business of selling tangible personal property. Since Mr. Saltzstine's position as expressed in his letter of September 7, 1967 related particularly to "flea market" vendors, we will consider your inquiry in that context.

Our understanding of a typical flea market is that it is composed of many individual booths in each of which property is displayed and sold. The owner of the premises rents the booths to various persons who wish to sell property, commonly consisting of used household goods and handcrafted items. The selling operations are usually conducted on week ends and attract a substantial number of potential customers.

According to Section 6014 of the Revenue and Taxation Code a "seller" includes every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax. "Business" is defined by Section 6013 as any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect.

You will note that Section 6013 does not specify that any particular amount of activity is required to constitute a business. The courts have stated, however, that the term "business" requires that the seller engage in more than one isolated sale (Market Street Railway Co. v. State Board of Equalization, 137 Cal. App. 2d 87, 95; Bank of America v. State Board of Equalization, 209 Cal. App. 2d 780, 797), and have indicated that more than two sales are required. (Bank of America v. State Board of Equalization, supra, p. 797.)

It appears that under the statutory and judicial tests, it may properly be concluded that flea market vendors are engaged in business as sellers. The conclusion that a flea market vendor is engaged in business as a seller seems particularly apt when it is considered that he rents a booth at an established market place with the object of making sales and directs his activity toward that object.

Moreover, it should be noted that the quantitative tests prescribed by the courts are hindsight tests, to be applied after the sales have reached a certain number. Those tests are adapted to cases where it is not otherwise clear that the vendor is engaged in a commercial selling enterprise. It is by no means settled that the tests preclude a finding



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that the first sale made by a person actively soliciting customers in a commercial setting is made in the course of a selling business.

It is our understanding that one of the primary purposes of your inquiry is to determine whether a flea market vendor may be required to obtain a seller's permit. In this connection we refer you to Section 6066 of the Revenue and Taxation Code, which provides that a person desiring to engage in business as a seller shall apply for a seller's permit. It would appear that a flea market vendor may be required to obtain a seller's permit at the time that he opens his booth for business.

We hope that the information and discussion contained in this letter will be helpful to you.

Very truly yours,

T. P. Putnam
Tax Counsel

TPP:fb [lb]

**STATE BOARD OF EQUALIZATION**

December 26, 1967

Dear Mr. X-----,

Your letter of December 12, 1967 addressed to Mr. Saltzstine has been referred to me for attention.

You have suggested that Mr. Saltzstine prepare a workable plan under which your client can satisfy the sales tax obligations arising from the operation of your client's flea market. In connection therewith, you have raised a question as to the circumstances under which an individual flea market vendor can be regarded as engaged in the business of selling.

In my opinion, the typical flea market vendor is engaged in the business of selling and all of his sales are subject to tax. This opinion is based on my understanding that such a vendor rents a booth with the intention of making a substantial number of sales. Under these circumstances, he is engaged in business for sales tax purposes regardless of whether he returns to the flea market in subsequent weeks. There may be situations in which a vendor is not engaged in business, as where he has only one or two small items to sell, but I believe these situations would be rare and for all practical purposes may be disregarded.

You have also raised a question concerning onerous requirements that might be entailed in checking on each vendor if your client is made responsible for the taxes that are due.

We are obligated to make a concerted effort to collect all of the sales taxes due from flea markets. Taken as a whole, a flea market is a large scale commercial enterprise in competition with other merchants who are paying sales taxes. We wish to collect these taxes, however, in the manner that is most convenient for both the flea market and the state.

With respect to flea markets other than that of your client, we have developed workable arrangements whereby the flea market owner assumes responsibility for reporting and paying the taxes due. I believe that a similar arrangement can be made with your client that will not impose an undue burden.

I am sure that Mr. Saltzstine and his staff will be glad to work with you and your client in developing a mutually satisfactory arrangement.

Very truly yours,

T.P. Putnam
Tax Counsel

TPP:kc [lb]



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CURRENT LEGAL DIGEST

PERMITS – Regulation 1699

(a) IN GENERAL

Flea Market Vendors. – Annotation 410.0140

The last sentence of this annotation will be deleted in light of Chief of Field Operations Robert Nunes' May 5, 1981 memorandum to District and Subdistrict Administrators.

DJH:po

5/5/81

W.D. Dunn to Legal

Note – backup on which annotation is based was reviewed and approved by Legal Division attorney D.J. Hennessy and Assistant Chief Counsel Gary J. Jogan.

SPJ 7/11/02



STATE BOARD OF EQUALIZATION**M e m o r a n d u m**

To: District and Subdistrict Administrators

Date: May 5, 1981

From: X-----

Subject: X-----

It has become evident that there is no uniform statewide policy regarding the administration of Section 6073 of the Sales and Use Tax Law. Therefore, with the receipt of this memorandum, you are asked to adopt the following procedures.

The envelope system, wherein sellers turn in their tax to the swap meet operator, who in turn remits it to the Board, will be discontinued. It will, therefore, be necessary to enlist the cooperation of the operators to ensure that repeat sellers have permits. In order to do so, these operators should be made aware of Section 6073 of the Sales and Use Tax Law. The operators should be told not to concern themselves with the person who has cleaned out his garage, or only sells once or twice a year, but only those who are repeat sellers.

Swap meet operators should be allowed a reasonable amount of time to comply. After that time, you should schedule a weekend permit survey, to verify that repeat sellers hold valid seller's permits, and are in compliance with the law. Later, occasional permit surveys should be made to ensure the continued adherence to the law.

Enclosed is a suggested handout to be used in contacting swap meet operators to assist you in informing them of their responsibilities.

If you have any questions regarding this policy, please let me know.

RN:jw
Enclosure

Cc: Mr. J. D. Dotson & Staff