



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

To: Mr. Michael D. Littrell
Principal Compliance Supervisor
X----- District

Date: March 4, 1997

From: Patricia Hart Jorgensen
Senior Tax Counsel

Subject: **Limited Liability Companies and Foreign Corporation**

This is in response to your memorandum of January 28, 1997 in which you inquire whether a Kansas corporation which has not registered with California's Secretary of State is considered an entity or person under California's Sales and Use Tax Laws.

As I understand the situation, there was a delay in issuing a seller's permit to X-----, a Domestic Limited Liability Company (LLC), registered as such with California's Secretary of State. This delay was due to the fact that one of X-----'s members, Y-----, a Kansas corporation, had not provided any information from California's Secretary of State to show that it was "a recognized entity in the state of California." As I understand the facts, Y-----, a non managing member of X----- has not engaged in retail sales in California nor will it engage in business as a retailer in California by virtue of its affiliation with X-----.

The source for the delay in processing X-----'s application for a seller's permit was Operation Memo 1048, entitled "Requiring Verification of Social Security Numbers and Driver's License Numbers for Seller's Permit Registration," issued on October 21, 1996. This memo explains that collection efforts have been hampered by the omission or inaccuracy of social security numbers and driver's license numbers on the applications of persons signing the certification section of the application. Under the guidelines of this memo, individuals, and in the case of partnerships or corporations, each partner or corporate officer, will be required to furnish verification of their social security number or driver's license number. This memo further explains that federal income tax numbers (FIEN), California Identification cards, passports, visas, paycheck stubs or income tax returns may be substituted for driver's license numbers or social security numbers. On the basis of this operations memo, it was your office's conclusion that X----- was required to register with the Secretary of State's Office in order to verify that it was recognized as an entity by the state of California.



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It is my understanding that X----- provided its FEIN number at the time the application was made for a seller's permit. Pursuant to Operations Memo 1048, this is a suitable form of identification. However, based on the Board's Compliance Policy and Procedures Manual (CPPM), section 230.055, entitled Limited Liability Companies, an LLC 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 LLC. This section further provides names of those members that will not be involved in management would be identified under the guidelines for seller's permit applications for limited partnerships. CPPM section 225.020, under the sub heading "Limited Partnerships," explains that only general partners need to be listed as partners on the seller's permit application and that "A list of limited partners should be obtained and forwarded to the Taxpayer Records Section for file information." The rationale for this position is, that, while a limited partner contributes to the partnership capital and shares in the profit, it "has no powers in the control of the business." Thus, if AMC is not involved in the management of the LLC, technically, its FEIN is not required.

The foregoing aside, I will now address your concerns as to whether or not a foreign corporation is recognized as a person in the state of California. Revenue and Taxation Code section 6005 explains that the term "person" includes:

“[A]ny individual, firm, partnership, joint venture, limited liability company, association social club, fraternal organization, **corporation**, estate, trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this state, any county, city and county, municipality, district, or other political subdivision of the state or any group or combination acting as a unit.” (Emphasis added.)

As drafted, section 6005 provides that a person includes **any** corporation. There is nothing in this section which mandates that in order to be considered a person, a corporation must be incorporated under the laws of California or registered with the Secretary of State. Proposed Business Taxes Law Guide Annotation 415.0110 (10/18/93), written before California authorized the formation of LLCs, illustrates that an entity recognized under another state's law will be considered a "person" under California Sales and Use Tax Laws. This proposed annotation provides, in pertinent part:

“At least eight states have authorized a business structure called limited liability companies. These organizations are neither partnerships nor corporations. This state has neither recognized nor required this ownership concept. However, such organizations are clearly 'persons' under section 6005....”

Thus, any corporation authorized under the laws of its state or country of origin is considered a "person" for purposes of California's Sales and Use Tax Laws. It is not necessary for a foreign corporation to register with California's Secretary of State for the sole purpose of acquiring a recognizable existence in this state.



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If you have any further questions, please feel free to contact me at ATSS 467-2291.

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cc: X----- District Administrator
Ms. Charlotte Paliani (MIC:70)