

**STATE BOARD OF EQUALIZATION**

LEGAL DIVISION (MIC:82)  
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Fourth District, Los Angeles

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*Controller, Sacramento*

August 7, 1995

REDACTED TEXT

BURTON W. OLIVER  
*Executive Director*

Re: Unidentified Taxpayer

Dear REDACTED TEXT:

This is in response to your letter dated June 13, 1995 in which you request a ruling regarding the application of tax to the proposed business activities of your out-of-state 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 that your client, which operates a mail order business in an east coast city, has no personnel in California, nor does it maintain any office space in this state. Your client would like to use the services of a collection agency located in California. The agency does not collect funds on behalf of the creditors; instead, employees attempt to persuade debtors to pay amounts they owe directly to their creditors. Your client is concerned that if it signs an agreement with this collection agency for collection and accounts receivable management services, your client will incur tax liability.

### **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.) 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 state that the collection agency would act on behalf of your client in attempting to secure payment of debts owed to it. We do not regard such debt collection activities as being for the purpose of selling, delivering, installing, assembling, or the taking of orders for tangible personal property. Assuming your client does not otherwise have a representative, agent, salesperson, canvasser, independent contractor, or solicitor, as those terms are used in subdivision (b) of section 6203, operating in this state for the purpose of selling, delivering, installing, assembling, or the taking of orders for any tangible personal property, your client is not a retailer engaged in business in this state under subdivision (b) of section 6203. The facts you provide do not indicate that any other provision of section 6203 would apply to your client's situation to bring it within the definition of a retailer engaged in business in this state. Although your client's California purchasers are liable for the applicable use tax on their mail order purchases, your client is not required to collect that tax from them if it is not engaged in business in this state within the meaning of section 6203. Of course, your client may voluntarily register to collect the use tax from its California purchasers.

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

Sincerely,

Kelly W. Ching  
Staff Counsel

KWC:cl

cc: Out-of-State District Administrator