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Executive Director

October 8, 2002

Mr. E--- D---

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XXX “---” Street, Suite XXXX

--- ---, California XXXXX

Re: Net Income from Convention and Trade Show Activities  
No Permit Number

Dear Mr. D---:

Your June 21, 2002, letter to District Principal Auditor Kenneth Fox of the San Diego district office was referred to the Legal Department for response. You request guidance on the Board’s interpretation of recent amendments to Revenue and Taxation Code section 6203, subdivision (e), and California Code of Regulations, Title 18, section (regulation) 1684, subdivision (b). Specifically, you ask that we define “net income” for purposes of the \$100,000 limit in section 6203, and that we further explain the meaning of the phrase “...from those [convention and trade show] activities in this state during the prior calendar year.”

**Background**

California imposes a sales tax on the gross receipts from the retail sale of tangible personal property in this state unless an exemption or exclusion otherwise applies. (Rev. & Tax. Code § 6051.) When the sales tax does not apply, such as when the sale occurs outside California, the storage, use, or consumption of tangible personal property in California is subject to use tax, measured by the sales price of the property. (Rev. & Tax. Code §§ 6011, 6201.) If the retailer of that property is engaged in business in California, it must collect the use tax from the purchaser and remit the tax to the Board. (Rev. & Tax. Code §§ 6203, 6204.)

Effective January 1, 2001, AB 330 (Statutes 2000, Chapter 617) amended section 6203, subdivision (e) as follows (shown here in ~~strikeout~~ and underline form):

“(e) Except as provided in this subdivision, a retailer is not a ‘retailer engaged in business in this state’ under paragraph (2) of subdivision (c) if that retailer’s sole physical presence in this state is to engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, and if the retailer, including any of his or her representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than ~~seven~~ 15 days, in whole or in part, in this state during any 12-month period and did not derive more than ~~ten thousand dollars (\$10,000)~~ of gross one hundred thousand dollars (\$100,000) of net income from those activities in this state during the prior calendar year. Notwithstanding the preceding sentence, a retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a ‘retailer engaged in business in this state,’ and is liable for collection of the applicable use tax, with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.”

The Board subsequently made conforming changes to Regulation 1684, subdivision (b), but did not add any further interpretation of the phrase “net income from those activities in this state during the prior calendar year.”

Section 6203 refers to Title 26 United States Code section 513, subdivision (d)(3)(A), part of the Internal Revenue Code. That subdivision provides:

“The term ‘convention and trade show activity’ means any activity of a kind traditionally conducted at conventions, annual meetings, or trade shows, including, but not limited to, any activity one of the purposes of which is to attract persons in an industry generally (without regard to membership in the sponsoring organization) as well as members of the public to the show for the purpose of displaying industry products or to stimulate interest in, and demand for, industry products or services, or to educate persons engaged in the industry in the development of new products and services or new rules and regulations affecting the industry.”

Neither the Internal Revenue Code (26 U.S.C. § 1 et seq.) nor the California Personal Income Tax Law (Rev. & Tax. Code § 17001 et seq.) specifically define “net income.” Revenue and Taxation Code section 24341, part of the California Corporation Tax Law, defines “net income” as “the gross income, computed under Chapter 6..., less the deductions allowed under this article and Article 2....” In *Gray v. Franchise Tax Board* (1991) 235 Cal.App.3d 36, 42, the court stated, among other things, that net income is gross income less deductions; thus, a tax on gross amounts without deduction, credit, or exemption is not a net income tax.

For property tax purposes, Revenue and Taxation Code section 423 requires that certain restricted open-space land be valued by capitalization of income. That section provides in part: “income shall be determined in accordance with rules and regulations issued by the [Board of Equalization] and with this section and shall be the difference between revenue and expenditures.” Pursuant to that authority, the Board adopted Property Tax Rule 53, Open-Space Value of Timberland (Cal. Code Regs., tit. 18, § 53). Subdivision (c) of that rule, related to the capitalization approach to valuation, provides:

“(c) .... Net income shall be estimated as follows:

“(1) When computing the expected annual or periodic net income from the harvest of timber crops, the appraiser shall determine the difference between revenue and expenditures.... Revenue shall include all income from all forest products. Expenditures shall include the estimated outlays of money which are ordinary and necessary for the production and maintenance of revenue as defined in Section 423 of the Revenue and Taxation Code.”

### **Discussion**

Your letter did not include the circumstances related to a specific retailer, or facts related to a specific transaction. Thus, our opinion is necessarily general in nature. This opinion does not constitute advice which may be relied on for purposes of relief from sales or use tax pursuant to Revenue and Taxation Code section 6596.

In determining whether a retailer has net income over \$100,000 from convention and trade show activities during a calendar year, we believe that “net income” has the same meaning used in section 24341, and would generally include gross income less deductions. (See *Gray v. Franchise Tax Board*, 235 Cal.App.3d at 42.) This would generally mean that the retailer is entitled to deduct from its revenues its ordinary and necessary expenditures to produce those revenues. The Board’s Rule 53, quoted in part above, related to capitalization of income, while not directly on point, is consistent with this approach.

For purposes of calculating the \$100,000 limit on net income, a retailer’s revenue generated from its convention or trade show activities in this state, such as sales made and orders taken, would be included. However, revenue generated that was totally unrelated to its convention and trade show activities would not be included.

Please feel free to contact me if you have any questions or comments about this letter.

Sincerely,

John Abbott  
Tax Counsel IV

JA:bb

cc: Mr. Kenneth Fox (FH)  
Mr. Vic Anderson (MIC:40)  
--- --- District Administrator (--)