

**STATE BOARD OF EQUALIZATION**

LEGAL DIVISION (MIC: 82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
Telephone: (916) 324-2634
FAX: (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

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

KATHLEEN CONNELL
Controller, Sacramento

JOHN CHIANG
Acting Member
Fourth District, Los Angeles

E. L. SORENSEN, JR.
Executive Director

January 8, 1998

Ms. M--- F. D---
Treasurer
L--- A--- A---
P.O. Box XXX
---, CA XXXXX

Re: L--- A--- A---
Account No. SR --- XX-XXXXXX

Dear Ms. D---:

I am responding to your letter dated October 17, 1997 to the Legal Division of the State Board of Equalization in which you ask about the correct reporting of sales tax on credit card sales made at art shows sponsored by the L--- A--- A--- (LAA).

You write that LAA holds outdoor art shows at which 40 to 50 artists exhibit their work at individual booths. Each artist pays 20% of his or her net sales to LAA. For its part, LAA provides a sales receipt book(s) in triplicate to each artist, and provides a central cashier to handle all credit card sales (but not cash sales). LAA pays the discount fee charged by its credit card processor who checks for the authorized use of each credit card.

When a customer makes a credit card purchase, the artist completes a sales receipt in triplicate, writing "credit sale" on the receipt, and gives a copy to the customer. The customer takes the sales receipt to the central cashier who processes the credit card sale, filling in the credit card charge amounts, including "sales tax," from the information on the sales receipt. The cashier gives the customer a copy of the "credit receipt," and the customer returns with it to the artist's booth in order to obtain his or her purchase.

At the end of the show, LAA's treasurer calls LAA's credit card processor to obtain authorization numbers for credit card purchases, and deposits the credit card receipts in LAA's checking account. Each artist completes a summary sheet at the end of the art show on which the artist totals his or her *cash* sales, and multiplies that amount by 20% to determine LAA's cash sales commission. Each artist gives LAA a check for the cash sales commission amount, copies of all sales receipts, and the unused remainder of the sales receipt book(s) provided to the artist by LAA.

Subsequently, LAA sends each artist a letter detailing the artist's *total* sales, commission already paid to LAA on cash sales, and the amount being withheld from credit card sales made by

that artist for LAA's commission on credit card sales (plus any additional amounts owed to LAA by the artist due to erroneous computations on the cash sales). In the letter LAA encloses a check for the net credit card sale balance owed to the artist.

Your letter assumes that each artist has a valid seller's permit. We note that Board records also show that LAA has a seller's permit. You write:

"Because LAA has deposited the credit card sales in its account and has collected not only the sales amount, but also the sales tax, it has insisted on reporting all those sales to the Board of Equalization. In the letter sent to each artist by the treasurer is the following paragraph:

"Please note that LAA must pay the sales tax on all charged items cleared through our account. Therefore, I will report your credit sales to the California Board of Equalization and pay the appropriate tax; you should adjust your records accordingly."

You ask two questions: (1) whether LAA is correct in insisting upon reporting all credit card sales and paying the sales tax in regard to such transactions, and (2) whether payment via a check from an artist of the 20% commission owed to LAA on *both* cash and credit sales, as opposed to LAA's withholding 20% from the credit card sales for its commission on those sales, would change our response to your first question.

Discussion

For the privilege of selling tangible personal property at retail, a retailer must pay a sales tax on the gross receipts of his or her sales of tangible personal property sold at retail in this state, unless specifically exempted or excluded by statute. (Rev. & Tax. Code § 6051.) This includes sales at retail of artwork made at art shows such as the ones which LAA sponsors.

A retailer includes every seller who makes sales at retail of tangible personal property. (Rev. & Tax. Code § 6015(a)(1).) A sale at retail means a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) The term "sale" means any transfer of title or possession of tangible personal property for a consideration. (Rev. & Tax. Code § 6006(a).) Every person involved 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, such as artwork, must hold a seller's permit issued by the Board. (Reg. 1699(a).)

Although it is the *retailer* who owes the sales tax, the retailer may collect sales tax reimbursement from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1.) This is commonly accomplished by identifying a charge for sales tax reimbursement on the sales check as "sales tax," or by posting a sign or other notice on the retailer's premises to the effect that sales tax reimbursement will be added to the sales price of items. (See Civ. Code § 1656.1(a)(2) & (3).)

Since it is the retailer who is liable for the payment to the state of sales tax relative to retail sales made at LAA art shows, a response to your questions turns in part upon who is the *retailer* of the artwork. You indicate that each individual artist is the person who transfers title and possession of the artwork to the customer after payment, and each artist has his or her own seller's permit. As such, it is the individual artist who is the retailer of the artwork, not LAA.

Also of relevance to your inquiry is the legal concept of the agency-principal relationship. An agent is one who by agreement represents another, called the principal, in dealings with third persons. (Civ. Code §§ 2295 & 2296.) Thus, if a retailer and a second person have an agreement to do so, the second person may represent the retailer in dealings with third persons, such as by collecting sales tax reimbursement for the retailer. As such, if an artist and LAA agree, LAA may act as the agent of the artist/principal and collect sales tax reimbursement from credit card customers of the artist. However, since it is the artist who is the retailer of the artwork, the artist (not LAA) must report the sales tax on its Sales and Use Tax Return and pay the sales tax to the Board. In order for the artist to do this, LAA must remit to the artist the sales tax reimbursement which it collects on behalf of the artist in credit card sales.

Nonetheless, LAA, as the operator of the art shows, does have certain responsibilities to the Board. Revenue and Taxation Code section 6073 discusses the responsibilities of operators of "flea markets, swap meets, and special events." Those terms as used in section 6073 include "any event at which two or more persons offer tangible personal property for sale or exchange and at which a fee is charged for the privilege of displaying the property for sale or exchange . . ." LAA, as the operator of art shows at which artists sell their artwork and at which LAA charges the artists a 20% commission on all sales for the privilege of participating in the art show, is the operator of a special event within the meaning of section 6073.

Since LAA is the operator of a special event, the other provisions of section 6073 also apply. In pertinent part, those provisions state:

"(a)(1) When the board determines it is necessary for the efficient administration of this part, the board may require the operator of a special event as a prerequisite to renting or leasing space on the premises owned or controlled by that operator to a person desiring to engage in or conduct business as a seller, to obtain written evidence that the seller is the holder of a valid seller's permit issued pursuant to Section 6067, or a written statement from the seller that he or she is not offering for sale any item that is taxable under this part or is otherwise not required to hold a valid seller's permit.

"(2) In providing the board with documentation required by the board pursuant to paragraph (1), an operator of . . . a special event may require each person desiring to engage in or conduct business as a seller at that . . . special event to provide his or her driver's license number to the operator on a form authorized by the board or under Section 6073.1.

“(b) At any time as the board may specify in a written notice, but in no case more than three times in a calendar year, the board may require an operator to submit to the board a list of vendors conducting business on their premises as a seller. Each listing shall be provided to the board within 30 days after the date of the board’s notice. The list shall contain the name and seller’s permit number for permitholders and the name, address, and driver’s license number for vendors who do not have seller’s permits. Records shall be retained to the same extent as all transactions involving sales or use tax liability as provided in Section 7053¹.” (Rev. & Tax. Code § 6073(a) & (b); footnote added.)

Thus, LAA should require each artist who participates in an LAA art show to present written proof that he or she holds a valid seller’s permit. Furthermore, the Board may require LAA, as the operator of a special event, (1) to obtain such written evidence from each artist that he or she has a valid seller’s permit, and (2) to provide the Board with a list of the artists’ names and seller’s permit numbers. An operator who fails or refuses to comply is subject to a penalty not exceeding \$1,000 for each offense. (Rev. & Tax. Code § 6073(d).)

In summary, the artist (not LAA) is the retailer of the artist’s artwork, and while LAA may collect sales tax reimbursement from credit card customers as an agent of the artist, LAA should remit the sales tax reimbursement collected to the artist who must report and pay his or her own sales tax. LAA should obtain written proof that each artist is the holder of a valid seller’s permit and the number of the permit, and provide that information to the Board if requested to do so. Our response would not be different if an artist were to write a check to LAA for the entire commission owed to LAA on both cash and credit sales, and LAA were to withhold only the amount of the sales tax owed on the credit card sales from the amount remitted to that artist.

I hope this information is of assistance. Please write again if we may answer any additional questions.

Sincerely,

Sharon Jarvis
Senior Tax Counsel

SJ:rz

cc: --- District Administrator - (--)

¹ Section 7053 reads: “Every seller, every retailer as defined in subdivision (b) of Section 6015, and every person storing, using, or otherwise consuming in this State tangible personal property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the board may require.”