

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6493

March 28, 1988

Mr. L--- D. J---
Certified Public Accountant
C--- & J---, Inc.
P. O. Box XXX
---, CA XXXXX-XXXX

B--- A--- – SR -- XX-XXXXXX
I--- M--- F--- (no permit)
Retailer engaged in business – use tax collection

Dear Mr. J---:

In your February 15, 1988 letter to the Board's legal staff regarding your client, B--- A---, you write that:

“B--- A--- is a recreation design and risk management consulting company. Their major consumers are parks and schools. As part of the service, the B--- recommend and estimate playground equipment sold by an out-of-state supplier. The supplier, I--- M--- F---, quotes final prices to the customer. The order is placed directly with the supplier who ships the product directly to the customer. Collection is also made by I--- M--- F---. The clients receive a commission for their services.

“Since my client only provides consulting services and receives commissions on product sales, I believe clarification should be made only regarding sales tax collection from the out-of-state supplier.”

Opinion

Based on the facts stated in your letter, we agree with your contention that B--- A--- has no obligation either to report and pay sales tax on these transactions, or to collect use tax from the purchasers. There is no indication that your client is purchasing and reselling the playground equipment sold by I--- M--- F---. Rather, I--- M--- F--- is a retailer engaged in business in this state within the meaning of Revenue and Taxation Code Section 6203(b), which provides that a “retailer engaged in business in this state” includes:

“(b) Any retailer having any representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any tangible personal property.”

A retailer who is engaged in business in California, and makes out-of-state sales of tangible personal property to consumers for storage, use or other consumption in California, is obligated to collect use tax imposed on the purchaser measured by the purchase price of the tangible property sold. Your client is a representative or agent of I--- M--- F--- for purposes of section 6203(b) since your client recommends and estimates the playground equipment sold by I--- M--- F---, and receives a commission from the seller.

Accordingly, it is the obligation of I--- M--- F---, not your client, to register with the Board to collect the use tax from California customers on its out-of-state sales. I will ask the Board's Out-of-State District office to contact I--- M--- F--- directly regarding registration with the Board for use tax collection purposes.

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

Sincerely,

John Abbott
Tax Counsel

JA:jb