



STATE BOARD OF EQUALIZATION

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December 8, 1994

BURTON W. OLIVER
Executive Director

Mr. A--- R. V---
Law Offices of A--- R. V---
XXXX --- Avenue
---, IL XXXXX

Re: Unidentified Taxpayer

Dear Mr. V---:

This is in response to your letter dated September 8, 1994 regarding the application of use tax to certain activities of an out-of-state dealer of rare coins.

You ask about tax liability in several situations, each of which is quoted below and followed by our response.

“Scenario 1: A rare coin dealer with no permanent offices, agents, representatives, property, or bank accounts in California physically enters California once annually, to attend a three-day rare coin dealer's convention. His purpose in attending the convention is to buy inventory from other coin dealers, and not to sell coins to members of the public who also attend the convention. The dealer advertises in national rare coin trade publications, and in response to one such advertisement a collector residing in California telephones him at his out-of-state office and purchases coins. The collector has never attended the convention, and the coins are delivered by the dealer to the collector in California through interstate mails.”

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.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) 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).)

In your first scenario, the rare coin dealer visits California for the purpose of attending the convention to buy inventory, and not to sell the coins. Such a visit would not bring the coin dealer within section 6203(b), and the facts you provide do not indicate that any other provision of section 6203 would apply to these facts to bring the dealer within the definition of a retailer engaged in business in this state. Therefore, such a dealer who is not otherwise engaged in business in this state would not be required to collect the use tax from a California coin collector who purchases coins from the dealer through the mail.

“Scenario 2: Same as scenario 1 except the California convention is held three times annually and the dealer attends each time.”

Assuming the purpose of the dealer's presence in the state remains the same, the answer regarding this scenario is the same as the answer to scenario 1. The increase from one to three visits annually will not change the answer.

“Scenario 3: Same as scenario 1 except the collector attended the coin convention prior to deciding to buy coins.”

As long as the dealer did not sell or take orders at the convention, or otherwise solicit or promote sales, the answer regarding this scenario is the same as that regarding scenario 1. The fact that a potential purchaser coincidentally attends the same convention does not affect the analysis. The answer would be different if the dealer promoted or solicited sales, such as by the displaying of coins.

“Scenario 4: Same as scenario 1 except the dealer also sells coins to the public at the convention (collecting appropriate sales tax for those sales).”

A dealer selling coins at the convention would be engaged in business in California under Revenue and Taxation Code section 6203(b) [See now Rev. & Tax. Code § 6203(e) for 7-day, \$10,000 exemption (DHL 10/5/99)]. As a retailer engaged in business in this state, when the dealer makes sales from outside California, it must collect the applicable use tax from California purchasers. This is true without regard to whether those purchasers attended the convention.

“Scenario 5: Same as scenario 1 except the coins are delivered to the collector's out-of-state bank for storage and never enter California.”

Neither the sales tax nor the use tax applies with respect to sales of coins that never enter California.

You state: “In a related matter, a rare coin trade publication has reported that the Board of Equalization has targeted a specific California coin convention (held in Long Beach), such that attendance at said convention will prompt a use tax audit while attendance at other California rare coin conventions will not. I am counsel to the owners of the Long Beach Convention, and would appreciate your comments on this allegation.”

We are not aware of the circumstances of this specific allegation. However, in our efforts to enforce compliance with the California Sales and Use Tax Law, it is possible that we might audit attendees at trade shows.

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