

**STATE BOARD OF EQUALIZATION**

450 N STREET, SACRAMENTO, CALIFORNIA
 PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
 TELEPHONE (916) 445-4380
 FAX (916) 323-3387

JOHAN KLEHS
 First District, Hayward

DEAN F. ANDAL
 Second District, Stockton

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 Third District, Torrance

JOHN CHIANG
 Fourth District, Los Angeles

KATHLEEN CONNELL
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E. L. SORENSEN, JR
 Executive Director

August 6, 1999

Re: Application for a Seller's Permit by a Minor

Dear X-----,

This is in response to your request to Ms Jennifer L. Willis, Taxpayers' Rights Advocate for the Board of Equalization (the "Board"), for an explanation of the legal basis for the denial of an application for a seller's permit under the Sales and Use Tax Law. Specifically, the Riverside District Office of the Board denied an application for a seller's permit made in the name of X-----, your five-year-old daughter.

Revenue and Taxation Code Section 6066 requires that every person desiring to engage in business as a seller file an application for a permit on a form prescribed by the Board, that the applicant sign the application and certify that the applicant will actively engage in business. In addition, Revenue and Taxation Code Section 6072 provides that a permit may be held only by persons actively engaging in or conducting a business as a seller of tangible personal property, and if the person is not actively engaged in business the permit must be surrendered to the Board.

Under Family Code Sections 6701 and 7050 a minor that is not emancipated lacks the legal capacity to enter into a binding contract, give a delegation of power, sue or be sued, or compromise, settle or adjust a claim. Due to the legal limitations on the ability of a minor to contract, to sue and be sued, and to delegate power, as well as practical and physical limitations on a minor's ability to actively engage in or conduct business, the Board is precluded from issuing a seller's permit to a person that has not reached the age of 18 years, except when that person is emancipated.

The Board may, however, issue a permit to an emancipated minor since an emancipated minor has the capacity to, among other things, (i) enter into a binding contract or give a delegation of power (ii) sue or be sued in the minor's own name and (iii) compromise, settle, arbitrate, or otherwise adjust a claim, action, or proceeding by or against the minor¹. To qualify for

¹ Family Code Section 7050

emancipation², the minor must (i) have entered into a valid marriage, (ii) be on active duty with the United States armed forces or (iii) have received a declaration of emancipation³ from a court.

In the instant case, the five-year-old applicant, X----- is a minor who is not emancipated, who lacks the ability to contract or delegate power, and who, because of her young age, is not capable of engaging in or conducting business as a seller or of signing the application and certifying that the minor will actively engage in or conduct a business as a seller of tangible personal property.

For all of the foregoing reasons, the Board will not issue a seller's permit to X----- . If you have any further questions, please contact M. Judith Nelson of my staff at (916) 324-2641.

Sincerely,

Timothy W. Boyer
Chief Counsel

TWB:ef

cc: Ms. Jennifer L. Willis, Taxpayers' Rights Advocate – MIC:70
Mr. Gerald T. Haff, Riverside District Office - EH

² Family Code Section 7002

³ Family Code Section 7120. In seeking a declaration of emancipation, the petition must set forth facts that (i) the minor is at least 14 years of age, (ii) the minor willingly lives separate and apart from the minor's parents or guardian with the consent or acquiescence of the minor's parents or guardian, (iii) the minor is managing his or her own financial affairs, and (iv) the source of the minor's income is not derived from any activity declared to be a crime by the laws of this state or the laws of the United States.