

**STATE BOARD OF EQUALIZATION**

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March 31, 1994

BURTON W. OLIVER
Executive Director

Mr. L. J--- U---, III
Tax Department
A--- W--- I---, Inc.
XXX W. --- Street
P. O. Box XXXX
---, PA XXXXX

Re: **SZ --- XX-XXXXXX**

Dear Mr. U---:

This is in response to your facsimile transmission of February 10, 1994 in which you request our opinion as to the sales and use tax registration requirements for WAVE. A--- Ventures, a subsidiary of A--- W--- I---, Inc. (A---), and W--- Ventures, a subsidiary of W--- S--- l Co. (W---), have created a partnership known as WAVE. Both parent corporations are Delaware corporations. A--- is registered in California for sales and use tax purposes.

WAVE manufactures ceiling grid in Pennsylvania and Maryland. Most administrative functions for WAVE, such as purchasing, computer services and accounts payable, are provided by either A--- or W---. You also state that A--- is acting as "selling agent" for WAVE. A--- issues invoices for the collection and remittance of all sales proceeds, including sales in California. A--- then remits the sales proceeds, less the sales tax, to WAVE.

A--- or W--- also issue the purchase orders and process payments of purchases made for WAVE, including some purchases made in California. Both parent corporations are reimbursed by WAVE at cost for purchases, including sales or use tax paid.

WAVE would like to forego any sales and use tax registration in California and have A--- be responsible for the collection and remittance of all sales tax. As for purchases made in California, A--- and W--- would like to pay sales tax directly to the vendor or accrue and remit use tax on their regular returns.

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property in California. When sales tax does not apply use tax is imposed on the storage, use or other consumption of tangible personal property purchased from a retailer for use in California, measured by the purchase price of the property. (Rev. & Tax. Code §§ 6201, 6401.)

Under Revenue and Taxation Code section 6066, every person desiring to engage in or conduct business as a seller within this state shall file with the Board an application for a permit for each place of business.

Revenue and Taxation Code section 6203 states that every retailer engaged in business in California and making sales of tangible personal property for storage, use or other consumption of the state shall collect the tax from the purchaser. A "retailer engaged in business" in this state includes the following:

"(a) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.

"(b) 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." (Emphasis added.)

You state that A--- is WAVE's selling agent for the sales made in California. If A--- is acting on behalf of WAVE when making the sales in California, then WAVE is a retailer engaged in business in this state. WAVE would be required to register with the Board and would be responsible for the collection and remittance of the tax on its sales in California.

However, if WAVE is selling the tangible personal property to A--- and A--- is in turn re-selling the property on its own behalf, then A--- would not be WAVE's agent. Since all of the sales to A--- would be for resale, these sales would not be subject to California sales tax. Rather, A---'s subsequent retail sales in California would be subject to sales tax and as the retailer, A--- would be responsible for paying that California sales tax.

For purchases made in California for use by WAVE at its out of state facilities, the application of tax depends on the circumstances of the sale. If the property is shipped out of California pursuant to the contract of sale and the purchaser does not take possession in California, then the sale is exempt. (Reg. 1620 (a)(3).) If the property is sold to WAVE and WAVE takes possession in California, the sale is subject to California sales tax. The sales tax is

imposed on the retailer but the retailer may collect reimbursement for its tax liability from WAVE if their contract of sale so provides. (Civ. Code § 1656.1.) If the property is sold to A--- for its own account and A--- then resells the property, the sale to A--- is not taxable (as a sale for resale). The application of tax to A---'s subsequent resale will depend on the circumstances of that sale.

From the facts provided in your letter, we are unable to conclusively determine whether A--- is acting as WAVE's agent when making the sales in California or whether it is making those sales on its own behalf. If A--- is acting as WAVE's agent, then WAVE is a retailer engaged in business in this state and is required to register with the Board. If A--- is not acting as WAVE's agent and WAVE has no other physical presence in this state, then WAVE is not required to register here.

If you have any further questions, please do not hesitate to write again.

Sincerely,

Sukhwinder K. Dhanda
Staff Counsel

SKD:plh

cc: Van Nuys District Administrator - AC