



STATE BOARD OF EQUALIZATION

1478 Change in general partners requires new permit.

Sacramento, California
June 19, 1952

Mr. X----- (WIS:WCK)

W.W. Mangels

Account No. Z-----

1657.15 Change in General Partners requires
application for new permit number. 6/19/52.

You are advised that where there is any change in the general partners operating a business a new entity is created necessitating the application for a new permit number (under a Form 400). It is the opinion of the legal staff that obtaining the signature of the new partners on a Form 400-P will not suffice.

WWM:ja



STATE BOARD OF EQUALIZATION**M e m o r a n d u m**

To: District Administrators

Date: September 30, 1985

From: Principal Business Taxes
Compliance Supervisor

Subject: Board's Refusal to Issue a Seller's Permit

Board staff cannot enforce the laws and regulations of another state agency nor can it police that agency's jurisdictions for the public's performance in this regard. However, there may be instances when our actions impact another agency's area of enforcement.

One such area involves the issuance of a seller's permit to a person who will operate at a location where, under another state law, it is illegal to sell.

Attached is a copy of a memo from Mr. Donald Hennessey which addresses this area. The last paragraph of Mr. Hennessey's memo provides information as to the policy each office should follow when faced with a similar situation. Please provide this information to your staff as guidance.

PKT:jw

cc: Mr. Douglas D. Bell
Mr. J.D. Dotson
Mr. R. Nunes
Mr. M. Taussig
Mr. D. Hennessey



STATE BOARD OF EQUALIZATION**M e m o r a n d u m**

To: Mr. P.K. Taylor

Date: September 24, 1985

From: Donald J. Hennessy

Subject: Refusal to Issue a Seller's Permit

This is in reply to your memorandum of September 16, 1985 which states the following facts:

"Various Indian groups are selling at roadside rests within the state's right of way. When DOT attempted to remove them through the legal process, the Indians claimed authority to sell there based on possession of a seller's permit. The court agreed with the Indians. In the case referred to, the business address on the permit was the address of the roadside rest. A printout of the registration file is attached."

You then ask whether the Board staff has a legal basis for refusing to issue a seller's permit to anyone for a business location where it is illegal to sell.

In our opinion, the Board does have a legal basis for refusing to issue or, we would add, revoking, a seller's permit when state law makes it illegal to sell tangible personal property at the particular location in question. A seller's permit is required of "Every person desiring to engage in or conduct business as a seller...." (Section 6066). A person cannot legally engage in business as a seller at locations where selling is forbidden by state law (including state regulations having the force and affect of the law). The legal basis which the Board staff should invoke in the above described factual situation is that a party to an illegal enterprise cannot require the Board to issue, or to continue in good standing, a seller's permit which specifically grants the privilege of engaging in the illegal enterprise. The Board staff's discretion must be exercised so as not to confer permissive authority on a person to embark on, or to continue, an illegal activity.

In 1938, in *Asher v. Johnson*, 26 Cal.App.2d 403, the court faced an analogous situation in which the plaintiff sued for a sales tax refund of monies obtained in an illegal game of chance. The court refused the refund otherwise due on the grounds that a party to an illegal enterprise could not come into a court of law to ask that its illegal project be carried out. Likewise, the parties herein cannot come to the Board staff for aid in carrying out an illegal project. The parties herein have already invoked in court the Board's



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issuance of a seller's permit to aid in the continuing of their illegal selling. The Board staff's discretionary authority to issue seller's permits should not be so misused.

Two further points. First, nothing in our above conclusion should be construed as resulting in the gross receipts from the illegal selling going untaxed. As the Asher Court, *supra*, at page 412 stated, "It is fundamental that an unlawful business may be taxed by governmental agencies." Secondly, the Board staff may ordinarily assume the legality of the selling activity contemplated by a seller's permit applicant. The Board staff need not investigate every applicant's activity and determine its legality before issuing a seller's permit. It is only when the illegal activity is patent from the outset that the Board staff should refuse to aid the illegality and refuse to issue or revoke a seller's permit.

DJH:rar

cc: R.L. Dick



STATE BOARD OF EQUALIZATION

To : Mr. Glenn Bystrom

July 15, 1996

September 30, 1985

From : Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed Principal Business Taxes Compliance Supervisor's memorandum of September 30, 1985 to District Administrators.

We are in agreement with his conclusion, as follows:

Refusal to Issue a Seller's Permit. The Board does have a legal basis for refusing to issue or revoking a seller's permit when state law makes it illegal to sell tangible personal property at the particular location in question. A person cannot legally engage in business as a seller at locations where selling is forbidden by state law (including state regulations which have the force and effect of law). The legal basis is that a party to an illegal enterprise cannot require the Board to issue, or to continue in good standing, a seller's permit which specifically grants the privilege of engaging in the legal enterprise. The Board's staff discretion must be exercised so as not to confer permissive authority on a person to embark on, or to continue, an illegal activity. (Asher v. Johnson, 26 Cal. App. 2d 403). 9/30/85