

**STATE BOARD OF EQUALIZATION**

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Executive Director

March 26, 1996

Mr. J--- P. K---
--- & --- LLP
XXX --- ---, Suite XXX
--- ---, CA XXXXX-XXXX

Re: J. J. K--- & A---s, Inc.
Account No. SC OH XX-XXXXXX

Dear Mr. K---:

This is in response to your letter dated February 13, 1996 in which you state:

“I have received your letter dated [January] 25, 1996 regarding the application of Revenue and Taxation Code section 6487.05 in the above-referenced matter. Your letter indicates the Board’s agreement with my analysis that the section applies to audit periods prior to January 1, 1995. However, you take the position that the section provides a three year statute of limitations only for taxpayers who registered after January 1, 1995. Thus, you propose to apply an eight year statute of limitations in the above-referenced case, solely because J. J. K--- registered with the Board in January of 1994.”

You then state your belief that there is no support for the position that the statute section applies only where a retailer has registered on or after January 1, 1995.

As explained in my letter to you dated January 25, 1996, Revenue and Taxation Code section 6487.05, entitled “Deficiency determinations; unregistered out-of-state retailers,” limits the statute of limitations to three years with respect to certain specified out-of-state retailers who would otherwise be subject to the eight-year statute of limitations. Under subdivision (a) of section 6487.05, a “qualifying retailer” is a retailer that meets all of the following conditions:

- “(1) The retailer is located outside this state, and has not previously registered with the Board.
- “(2) The retailer is engaged in business in this state, as defined in section 6203.
- “(3) The retailer voluntarily registers with the Board.
- “(4) The retailer has not been previously contacted by the Board or its agents regarding the provisions of section 6203.
- “(5) As determined by the Board, the retailer's failure to file a return or failure to report or pay the tax or amount due required by law was due to reasonable cause and was not a result of negligence or intentional disregard of the law, or because of fraud or an intent to evade the provisions of this part.”

As the title of the statute section indicates, the purpose of section 6487.05 is to encourage registration of unregistered out-of-state retailers; that is, retailers that were not yet registered by the operative date of the statute: January 1, 1995. It certainly cannot be said that a retailer already registered in California was encouraged to do so by a statute that was adopted after that retailer's registration. This interpretation is consistent with the conditions set forth in subdivision (a)(1) of the statute section, and with previous opinions written by the Legal Division in which we have concluded that retailers that registered before January 1, 1995 do not come within the protection of section 6487.05. Our records show that your client registered with this state in January of 1994; therefore, section 6487.05 does not apply in your client's circumstances.

Further, subdivisions (a)(3) and (a)(4) of section 6487.05 require that in order to meet the definition of a “qualifying retailer,” a retailer must voluntarily register with the Board without previously having been contacted by the Board or its agents regarding the provisions of section 6203. Our records indicate that Board employees sent J. J. K--- & A---, Inc. a registration inquiry dated August 17, 1993 regarding the provisions of section 6203.

Since your client has failed to meet all of the conditions set forth in subdivision (a) of section 6487.05, it is not a “qualifying retailer” under that section; therefore, your client does not come within the protection of section 6487.05. This means that, as stated in my previous letter to you, the three year limitations period specified in section 6487 applies with respect to the quarters at issue for which your client has filed California sales and use tax returns. With respect to the quarters under consideration for which your client did not file returns, the eight year limitations period specified in section 6487 applies.

I hope this letter is of help to you in clarifying our interpretation of section 6487.05 as it applies to your client's circumstances. 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 (OH)
Mr. John Gibbs (OH)
Ms. Debra A. Stadler (OHA)