

## **220.0000 “ENGAGED IN BUSINESS”**

**220.0002 Accepting Returned Products on Behalf of Out-of-State Retailer.** Company B is an out-of-state retailer located solely outside California. It sells products through its website with all orders processed out of state. The products are shipped directly to the customers from the retailer’s out-of-state warehouse. Customers may return unwanted merchandise previously ordered from the out-of-state retailer to Company A’s in-state stores. Company A then returns the products to Company B’s out-of-state warehouse. Company B will issue a credit or refund to the customer and will compensate Company A for its services on its behalf.

Company A is acting as Company B’s representative in this state for acceptance of returns of items sold. The ability of Company B’s customers to return unwanted items to local stores of Company A on Company B’s behalf as an alternative to packing them up and shipping them back to Company B is sufficient to bring Company B within the definition of retailer engaged in business in this state. 6/22/99. (2000–1).

**220.0008 Agent Operating in State.** A person selling income tax software packages ships all products from outside California by common carrier or postal service. Although there are no employees, inventory or other assets in California, the person pays commission to a California firm that provides telephone responses regarding California sales. Orders are solicited by direct mail. The California firm, which provide telephone responses, is a California representative (agent) primarily during the income tax season. The agent answers basic questions about the software but any involved technical questions are answered by the home office. All sales orders are mailed to the out-of-state house office.

Sufficient information was received to conclude the person was a retailer engaged in business in California under section 6203 (b). The person clearly has an agent in California for the purpose of selling tangible personal property. The agent provides information to potential customers with the goal of selling tangible personal property to those potential customers. There can be no doubt that the agents are operating under the authority of the person for the purpose of selling tangible personal property since the agents are only compensated if a sale is made. 7/9/92.

**220.0009 Agent for Non-Registered Out-of-State Sellers.** Unregistered out-of-state chemical companies and distributors contracted with a California manufacturer to produce products under each chemical company’s own private label. The out-of-state companies made arrangements with carriers to pick up the products from the manufacturer’s plant and deliver them to their consumer customers, located in California. The bills of lading indicate that the carrier received the products from the out-of-state retailer at the manufacturer’s plant.

Under this scenario, the out-of-state chemical companies are using the manufacturer as an agent/representative and a place of business/distribution, for the purpose of distributing and delivering products to California consumers. Thus, the out-of-state companies that regularly used the manufacturer in this way are

engaged in business in California and their sales to consumers are subject to the sales tax. The manufacturer would not be deemed to be the retailer under 6007 for those unregistered out-of-state companies who do this on a regular basis. 10/16/90.

[220.0009.500](#) **Agent of Out-of-State Supplier.** A recreation design and risk management company, as part of its services, recommends and estimates the cost of playground equipment which is sold by an out-of-state supplier. The supplier quotes the final price, bills, and collects for the equipment. The design and risk management company is paid a commission by the out-of-state seller. The recreation design and risk management company is a representative of the out-of-state seller. The out-of-state firm is “engaged in business” in California and is required to collect the use tax. 3/28/88.

[220.0010](#) **Agent to Receive Orders.** A corporation selling tangible personal property to California consumers by means of television advertisements on stations in California which list an “800” telephone number and a box number at the television station for receipt of orders is required to collect and pay over California use tax on sales to California customers. The television stations became representatives or agents authorized by the corporation to take orders. 7/6/77.

[220.0015](#) **Attendance at Conferences and Occasional Sales Activity.** A business is engaged in making mail order sales from a location outside the state. It maintains no offices or warehouses in California. Representatives sometimes attend workshops and conferences in California. While at these workshops and conferences, the representatives present exhibits of products sold by the business. The general policy is not to make sales, but at times an order is taken and sent out of state for processing. In addition, an employee makes calls on California customers.

Both of these activities establish nexus for the purpose of requiring the business to collect use tax from its California customers. 11/14/94. (Am. 2002–1; Am. 2003–3).

(Note: Subdivision (e) was added to Revenue and Taxation Code section 6203, operative April 1, 1998, and further amended operative January 1, 2001, to add an exception from the definition of “retailer engaged in business” for specified trade show activities.)

[220.0020](#) **Authority of Representative.** For a representative to be considered as operating “under the authority of” an out-of-state retailer, it is not necessary that the retailer supervise or control the details of the work of the representative. The phrase “under the authority of” in section 6203(b) refers to any relationship pursuant to which any power whatsoever is delegated by the out-of-state retailer to his California representative. 8/29/58.

220.0024 **Banking Activity in California.** An Arizona corporation has no physical presence in California, either directly or indirectly (such as through an agent or representative), and it transacts all its business in California, including banking, by mail, common carrier, or telephone. Section 6203(f) [now 6203(c)(4)] defines “retailer engaged in business in this state” to include a person benefiting from

banking activities in California. However, this subdivision is not presently operative because it requires Congress to pass enabling legislation, and Congress has not yet done so. Thus, under current law, the Arizona corporation's banking in this state would not alone bring it within the definition of a retailer engaged in business in this state. 11/12/96. (Am. 2001-3).

(Note: Revenue and Taxation Code section 6203 was amended effective January 1, 2000. Reader should note changes to the subdivision indicated above.)

**220.0030 Book Sales by Out-of-State Publisher.** A company is engaged in selling books and printed materials by direct mail solicitation and also through arrangements with school teachers in California. The company sends promotional material through the mail to teachers to pass out to their students. The students take the materials home and together with their parents, select the books they wish to purchase. The students bring the order forms and payment to the classroom where the teacher consolidates the orders and sends the orders and payment to the company. The company ships the books to the teachers who distribute the books to the students.

The teachers represent the company to the students and participate in making the sales. The teachers operate under the company's authority in that they are authorized to take orders, collect payment, and make deliveries of the merchandise. The use of school organizations to perform the identical activities were regarded as the establishment of an agency relationship in *Scholastic Book Clubs, Inc. v. State Board of Equalization*, 207 Cal.App.3d 734. There is ample basis for finding that the teachers are the company's agents and that the company is engaged in business in this state. By being engaged in business in this state, the company is required to collect the use tax on all sales to California customers. 11/19/92.

**220.0033 Bourse Table.** The dealer's participation in a convention in California is not the basis for regarding the dealer as engaged in business in California, but rather the dealer's selling activities in this state. Thus, if a dealer participates in the educational offerings of a convention, seminars, and symposiums, that participation alone would not be a basis for regarding the dealer as engaged in business in this state. Furthermore, even if the dealer makes purchases of tangible personal property at the convention, that activity would not be a basis for regarding the dealer as engaged in business in this state. If, however, the dealer engages in selling activities in this state, e.g., by obtaining a bourse table for purposes related to selling tangible personal property, it will be regarded as engaged in business in this state within the meaning of section 6203. When such is the case, the dealer must register for collection of use tax and must collect that use tax with respect to all its retail sales into California, not just the ones related to its selling activities in California. 2/27/95; 7/14/95.

(Refer to section 6203 for limited exceptions for trade show participation.) (Am. 2000-3).

**220.0040 Business Office Maintained for Counseling Purposes.** An out-of-state company makes sales in California and maintains a business office in San Francisco for two directors who perform a public service counseling public

officials and others. The directors do not solicit orders or render services in connection with the sale of the company's products. The company is a retailer engaged in business in California and is required to collect use tax on its sales to California consumers because it has a business office here. 2/6/70. (Am. M99-1).

[220.0047](#) **Catalogs Distributed in California by Related Corporation.** An out-of-state operation engages in mail order sales to employees of its parent corporation. The parent corporation maintains facilities in California and distributes catalogs to its employees via inter-office mail. All orders and payments are sent by individual employees to the out-of-state subsidiary and the subsidiary sends all merchandise to the individual purchasers via United States mail or a common carrier. The parent corporation acts as an agent of the subsidiary when distributing the catalogs. The catalogs are for the purpose of facilitating sales, and the parent is therefore an agent of the subsidiary for the purpose of section 6203. The subsidiary is therefore engaged in business in this state because it has an agent in this state for the purpose of selling tangible personal property. 11/6/79.

[220.0055](#) **Customer Billings Sold and Mailed Outside State.** A California retailer (taxpayer), a printing and manufacturing broker of recycled paper, has a contract to manufacture and print the phone bill invoices and the envelopes in which the phone bills are mailed to the phone company's customers.

The paper that the taxpayer purchases is shipped from a mill in Canada to a location outside California where a company manufactures and prints the phone bill invoices and the envelopes. After the phone bill invoices and envelopes are manufactured, they are delivered to a data-processing vendor's facility located outside of California. The data processing vendor is directly hired by the phone company. It is responsible for laser-printing the individual phone bills that list the actual calls made during a given month, stuffing the phone bills into envelopes, and mailing them. The phone company has customers in all 50 states, so a portion of the bills are mailed to California customers from an out-of-state location.

Since the retail sale of the paper and the printing occurs outside of California, the sale is not subject to the sales tax. Also, the phone company is regarded as the consumer of bills and invoices sent to its customers to reflect the company's monthly charges. Thus, since the phone company's vendor inserts the bills into envelopes and mails them to California customers from a location outside this state, the phone company's use has occurred outside California. Therefore, the phone company is not regarded as purchasing the bills or envelopes for use in California and the taxpayer is not required to collect the use tax from the telephone company. 8/12/94.

[220.0060](#) **Delivery by Out-of-State Retailer.** An out-of-state retailer is "engaged in business in this state" under section 6203 and therefore required to collect use tax if he makes substantial number of deliveries by his own truck to points in California. If the driver also makes collections, jurisdiction may be sustained on a lesser number of deliveries as long as the deliveries are frequent enough to be considered regularly made. 10/16/57.

**220.0073 Trade Shows.** An out-of-state taxpayer who is in the business of selling software holds five or six trade shows, each generally lasting from one-half to two days, in California per year. The purpose of the trade shows is to demonstrate the products it sells. The taxpayer does not enter into actual contracts for sale during the trade shows, nor does it take deposits for sales. The taxpayer solicits sales over the telephone from its out-of-state location. The taxpayer does no advertising in California nor does it solicit sales by catalog or flyers. The taxpayer does not have any resident employees, locations, or telephone listings in California. However, on rare occasions, a sales person may visit a potential customer within this state. No sale is ever consummated on such visits and orders are not approved within California. All products sold are sent directly to the purchaser by common carrier or mail from outside California.

In this case, the taxpayer is entering the state in order to make sales. The fact that the taxpayer refuses to accept orders for software is irrelevant. It is holding the trade shows for the specific purpose of making sales of tangible personal property. That is, it is entering California for the purpose of selling. It is a retailer engaged in business in this state within the meaning of section 6203. It also appears that the taxpayer's sales person entering this state to "visit" potential customers is intended to maintain or enlarge its market in California. These visits are an additional basis for regarding the taxpayer as engaged in business in California. 3/22/96; 5/9/01. (Am. 2002-1; Am. 2002-2).

(Note: Subdivision (e) was added to Revenue and Taxation Code section 6203, operative April 1, 1998 and further amended operative January 1, 2001, to add a limited exception from the definition "retailer engaged in business" for specified trade show activities.)

**220.0080 Delivery to Carrier in State.** The presence of an out-of-state seller's employees in California for the purpose of making deliveries to California customers, or to other carriers in California for ultimate delivery to California customers is sufficient to require the seller to collect use tax under section 6203(b). It is not necessary in order to invoke tax liability, that the seller deliver the goods directly to the customer. 1/19/67.

**220.0083 Demonstration.** An out-of-state retailer with a truck used to haul and demonstrate its equipment in California, is considered having a representative in California for the purpose of selling equipment. As provided in section 6203(b), the out-of-state retailer is considered "engaged in business" in California and must collect the applicable use tax from its customers. 12/22/94.

**220.0084 Demonstrator Units.** A taxpayer advertises in trade and business journals. Its only place of business is outside of California. If a California firm contacts the taxpayer, an out-of-state based salesperson visits the California firm together with a demonstrator unit for the customer's evaluation. Upon completion of the evaluation period, the customer may order units which are installed on the customer's vehicle at the out-of-state business location for return to California.

The firm is "engaged in business" in California and is required to collect the use tax. 8/9/73.

220.0085 **Direct Marketer—Nexus with California.** An out-of-state direct marketer inquired whether it had created sufficient nexus with California to require that it collect use tax on sales shipped to California consumers through the following actions:

(1) Doing business with a California based “list broker”. (There are no other connections with the broker and business is done through the mail and on the telephone.)

(2) The list broker obtains a “computer tape listing prospective” from a list owner.

(3) The list is sent to a California computer service bureau.

(4) The computer service bureau combines this list with others received from the direct marketer, creates mailing labels and ships the mailing labels to Chicago.

(5) The direct marketer, through its agent in Illinois, attaches the labels to its catalogs and mails them throughout the country, including California. The direct marketer has not created sufficient nexus with California to be considered a “retailer engaged in business in this state”. (Revenue and Taxation Code section 6203 (b).) None of the above listed actions include any representative, agent, salesperson, etc., operating in California under the authority of the direct marketer. 4/16/93.

[220.0090](#) **Distribution of Notepads to College Students.** An out-of-state retailer is to be retained by certain businesses to produce special order notepads. These pads will bear the name of a participating college and the name of the sponsoring business. The pads will be distributed in bulk to the participating college for distribution to its students as part of the school’s registration package. The bulk pads will be delivered to the colleges by common carrier. Each pad sponsor will pay to the out-of-state retailer a price for each pad plus a distribution royalty which is also based on a per pad price. The distribution royalty will then be forwarded by the out-of-state retailer to the colleges.

Since the out-of-state retailer pays the colleges a distribution royalty for delivering the notepads to the students, the colleges act as agents operating in this state under authority of the out-of-state retailer. Therefore, the out-of-state retailer is “engaged in business in this state” and is required to collect use tax from the sponsors measured by the sales price of the note pads delivered in California. 12/20/89.

220.0093 **Drop Shipment from Outside the State.** A taxpayer offers goods for sale through electronic terminals located in California. Purchases are made by customers who view the products on the terminals and pay by means of credit cards which are inserted into the terminals. The taxpayer pays California sales tax on such sales through terminals located in California unless the delivery address specified is outside California.

The taxpayer may ship the goods directly or, if the item is not in stock, the taxpayer will direct its out-of-state supplier to ship the goods directly. Some of the taxpayer’s suppliers make sales on their own behalf by mail order. They have no other contact with this state. Sales through the electronic terminals by the

taxpayer do not create sufficient nexus as to allow the Board to require the out-of-state mail order vendors to collect use tax on their own mail order sales to California consumers. 11/18/83.

**220.0093.775 Employees Entering California to Install Property Sold.** An out-of-state firm maintains a single business facility outside California where it designs and fabricates art creations and displays for use in conventions, promotions, and other public displays. The firm's sales of goods to its California customers occur outside this state. Occasionally, the firm sends its employees to California to set up or install the visual displays it sells. On one occasion, the firm's employees were present in California for a one week period in order to install a large display. Since the firm sends employees into California to set up or install visual displays for its customers, its physical presence in California makes the firm a retailer engaged in business inside this state pursuant to section 6203(b). Therefore, the taxpayer is required to register with the Board and collect use tax on its sales of property to its customers for use inside this state. 6/19/96.

**220.0093.900 Engaged in Business.** A nonprofit organization located out of state, among other things, has relatively insubstantial mail order sales of products such as science books and posters, and also leases its mailing lists. All sales and leases are handled by its out-of-state office. Some customers are located in California.

The organization has hired a California professor as a part-time editor of its exempt periodical journal. The editor performs no editing activities in California, but does perform other services for the organization in California, such as correspondence and telephone calls from his faculty office. In appreciation for the availability of the editor's office space, and for an assistant who is a university employee, the organization makes a non negotiated payment to the university which payment is not directly related to the value of the university's resources used by the organization. In addition, the organization has a western division (Division) which includes California and has no official designated office and no employees in California. The only persons regularly performing services for the Division are two employees of a California nonprofit organization who have been authorized to spend about one-half of their time on Division activities, and to use their regular place and facilities. The organization pays the California nonprofit organization one-half of the salaries of the two employees. There is no payment made for office space. However, the Division pays \$600 per year as a goodwill gesture, and, also pays for postage and one telephone line. The Division does own some office equipment located in the building. The Division activities consist primarily of arranging annual meetings, printing a newsletter, and publishing books based on symposia presented at its annual meetings. The California nonprofit organization finances the publications, handles the sales, collects sales taxes, and remits net receipts to the Division. Neither the editor nor the Division has any role in the sales of the organization's products or the leases of its mailing lists.

The organization is engaged in business in California within the meaning of section 6203 (a), by reason of its Division's activities and its editor's activities in this state. The Division operates as the publisher of books, publishes a newsletter,

organizes meetings, and handles telephone calls and related correspondence. Likewise, the editor uses his university office for correspondence and telephone calls related to the publication of the organization's journal. The Division's employees and the editor use those offices for organization activities with the approval and support of the California nonprofit organization and the university, and those individuals are compensated for their organization-related activities by the organization.

With respect to mailing list, section 6203(c) makes any lessor of tangible personal property leased in California a retailer engaged in business in this state for purposes of collecting use tax from its lessees. Thus, if the mailing list is provided to a lessee in a taxable manner, i.e., on magnetic tape or similar devices, the rentals are taxable and the organization is required to collect the use tax from its lessees. (Regulation 1504.) However, even if the organization's rentals of the mailing list are taxable, this fact by itself would not have made the organization liable for use tax collection on its sales of other tangible personal property to California customers. It must have activities described above to be required to collect the use tax on such sales. 11/26/85.

(Note: Subsequent statutory change re application of tax to mailing lists.)

**220.0094 Engaged in Business—Out-of-State Dealer of Coins.** An out-of-state retailer of rare coins who has no location, representative, or inventory in this state, is not regarded as "engaged in business" merely because the dealer may attend one or more trade conventions in this state, for the purpose of purchasing rare coins, as long as the dealer does not promote or solicit sales at the convention. This is the case even if the dealer makes subsequent mail order sales, solicited through trade publications, to someone who had coincidentally attended the same convention as the retailer.

If the dealer participates in selling at the conventions, the dealer would be doing business in California. As such, the dealer would be required to pay sales tax on sales made at the conventions. The dealer would also be required to collect and pay the use tax on sales made to California consumers, from outside this state, regardless of whether those purchasers attended the show. 12/8/94. (Am. 2003-3).

(Note: Subdivision (e) was added to Revenue and Taxation Code section 6203, effective April 1, 1998, and further amended operative January 1, 2001, to add an exception from the definition of "retailer engaged in business" for specified trade show activities.)

**220.0095 Engaged in Business—Trade Shows.** A firm's employees attended a trade show at least twice a year for four consecutive years. In addition, out-of-state dealers of its products regularly solicited sales in California with the sales order issued in the firm's name rather than the dealer's.

The firm does not have an office, warehouse or other place of business in California. During the four-year period, it sold 157 items for a total selling price of \$211,184 from sales made at trade shows or solicited by the dealers. In addition, fifty to sixty percent of its sales into California were by telephone orders as the result of an advertisement in trade magazines.

The firm has sufficient nexus to require collection of tax on not only the sales at trade shows and by dealers, but also the mail order sales. 4/25/95. 5/9/01. (Am. 2002-1).

(Note: Subdivision (e) was added to Revenue and Taxation Code section 6203, effective April 1, 1998, and further amended operative January 1, 2001, to add an exception from the definition of “retailer engaged in business” for specified trade show activities.)

**220.0100 Franchise Dealer Designated as Independent Contractor.** An out-of-state supplier of magazines and encyclopedias entered into franchise dealer agreements with individuals in this state, pursuant to which the individuals (designated in the contract as independent contractors) were authorized to solicit combination installment sales of magazines and encyclopedias. Purchase orders were sent to the out-of-state supplier for acceptance and approval. The magazines and encyclopedias were drop shipped to the customers in this state. Periodically, the supplier would obtain mail orders directly from the customers for yearbooks.

Since the franchise dealers were representatives of the out-of-state supplier operating in this state under the authority of the out-of-state supplier for the purpose of selling or taking orders for encyclopedias, the out-of-state supplier was “engaged in business in this state” and was required to register and collect the use tax with respect to encyclopedias and yearbooks sold to customers in California, notwithstanding the fact that the franchise dealers were independent contractors. 11/30/64.

**220.0112 Independent Contractor Transmitting Order.** A retailer is engaged in business in this state when it has an independent contractor who resides in this state and transmits orders and other information to the retailer’s head office. These transmittals apparently resulted in the delivery of merchandise for storage, use, or consumption in this state. While the independent contractor may not have had express authority to solicit sales in California, he nevertheless engaged in business activities on the retailer’s behalf which generated gross receipts and/or perpetuated an ongoing business relationship from which gross receipts were derived. 9/7/90.

**220.0117 Independent Dealers.** An out-of-state firm sells its merchandise to California consumers through its mail-order division which is also located outside of California. Orders for purchases are by telephone at its out-of-state location and goods are shipped to consumers by U.P.S. The firm, including its mail-order division, has no continuous or regular physical presence in California. If a product sold by the firm requires repair which is covered by warranty, the work is performed at its out-of-state location, except for products whose manufacturer is responsible for the warranty repairs. Repairs not covered by warranty are offered by authorized California dealers of the merchandise and the firm is not involved in such repairs.

California customers can also purchase the firm’s merchandise from authorized California dealers. The firm has a distribution network of wholesale distributors to whom it sells merchandise. Those wholesale distributors in turn sell the merchandise to authorized independent dealers. The dealers carry the firm’s

brands as well as those of competitors. The firm has no direct contact with or any ownership interest in the dealers.

From the facts presented, the dealers are retailers who sell the firm's merchandise on their own behalf and not for the firm. Also, there is no indication that the dealers, or anyone else in California, acts as the firm's agent or representative for the purpose of selling, delivering, installing, assembling, or taking orders for any merchandise. Therefore, the firm is not engaged in business in California and thus is not liable to collect use tax on its mail order sales of merchandise in California. 6/10/94.

**220.0119 Independent Representative.** An out-of-state retailer has no office or property in California. The retailer's only contact with customers in California is through an independent representative who also is a representative for other companies. The representative calls on customers and forwards all orders to the out-of-state retailer. Upon completion of the work, the product is shipped via common carrier FOB shipping point to the California customer.

The phrase "under the authority of" in section 6203(b) refers to any relationship pursuant to which any power whatsoever is delegated by an out-of-state retailer to its California representative. Therefore, the out-of-state retailer is engaged in business in this state because it has a sales representative who is physically located in California and that person solicits sales of tangible personal property under power delegated to that person by the out-of-state retailer. As such, the out-of-state retailer must collect the applicable use tax from all of its California customers and pay that tax to this state, without regard to whether the purchase is made through the California solicitor, or entirely by mail or telephone. 11/2/95.

**220.0120 Independent Subscription Agencies.** An out-of-state publishing firm is considered as engaging in business in California under section 6203 when the solicitation and acceptance of orders for directories and periodicals which are nonexempt property are taken by independent subscription agencies located in this state. The solicitation of orders by the subscription agency, which utilizes sample or descriptive advertising materials as a means of obtaining an order, provides the minimum contact necessary to impose the duty of collecting the use tax from the purchaser, user, or consumer, even though the publications are purchased in interstate commerce. 4/11/69.

**220.0125 Internet Nexus.** An out-of-state retailer engages in selling tangible personal property in California through its Internet web sites. The retailer's parent corporation operates retail locations in this State. Signs are posted inside the retail stores informing customers that they may purchase gift cards that can be used either online (via the out-of-state retailer's web address) or at the named retail stores. The signs also indicate that customers can obtain discounts on their online orders when they shop with a gift card.

By selling gift cards that can be used to purchase tangible personal property at the out-of-state retailer's Internet web site, the in-state parent is acting as the out-of-state retailer's representative and is engaged in selling activities on the out-of-state retailer's behalf for purposes of Revenue and Taxation Code section 6203

(c)(2). Accordingly, the out-of-state retailer is engaged in business in this state and must register to collect California's use tax. 12/21/00. (2001-3).

**220.0137 Investing Through an Investment Manager.** The retaining of a California investment manager to manage the investment of cash of an out-of-state retailer does not result in classifying the out-of-state firm as "engaged in business in this state" within the meaning of section 6203. 4/19/93.

**220.0140 Lessors.** The purpose of the addition of subsection (c) to section 6203 was to require the collection of the use tax by an out-of-state lessor on leases of tangible personal property in this state where the lessor did not otherwise qualify as "engaged in business in this state" under section 6203(a) or (b). Where the lessor's connection with this state is solely that of leasing tangible personal property, he is responsible for collection of the use tax only with respect to leased property physically located in this state. The mere presence of the leased property in this state does not constitute the requisite nexus with respect to sales in interstate commerce, made by the out-of-state lessor to California customers. 1/21/69.

**220.0160 Local Advertising Solicitation.** A magazine publisher is not engaged in business in California within the meaning of section 6203 when the only local activity is solicitation of advertising by an independent contractor who represents numerous clients. 8/26/64.

**220.0160.350 Lumber Broker.** A taxpayer who calls itself a lumber broker enters into the following types of transactions:

(1) The taxpayer purchases lumber from a California supplier and ships the product to a buyer within the State of California.

(2) The taxpayer purchases lumber from a supplier located outside the State of California, arranges to have the product shipped into California for minor improvements (e.g., having a third party pressure treat the lumber), and then arranges to have the improved product shipped to the customer located within California. Occasionally, the product may be in the state of California for more than 30 days while at the third party location for treatment before being shipped to the customer.

(3) The taxpayer purchases logs and lumber from surrounding states and has the product shipped directly to customers located within California.

(4) The taxpayer may hold product in the State of California which has been sold but cannot be accepted by the buyer immediately. The product may be held 30 days or longer.

In each situation, the taxpayer purchases the lumber. Therefore, although the taxpayer calls itself a broker who did not take title to the lumber, it was not a true broker and did, in fact, purchase and resell the lumber on its own account.

The application of tax depends on whether the taxpayer is regarded as engaged in business in California. If so, it must report the applicable sales or use tax on these transactions. The taxpayer will be regarded as engaged in business in this state if any person in California acts as its representative for purposes related to sales of tangible personal property. The facts indicate that the taxpayer may be in this state

and would be required to pay sales tax on its sales in which its location in this state participates, and to collect and remit use tax on its other sales; however, there is insufficient information to make this determination. If the taxpayer is not regarded as engaged in business in this state, then the California supplier in situation 1, the third party performing improvements in situation 2, and any suppliers in situation 3 who are themselves engaged in business in California would be regarded as making the retail sale under the second paragraph of section 6007. It also appears that there would be a person who would be classified as the retailer under section 6007 in situation 4; however, there is insufficient information to make this determination. 12/14/95. (Am. M99-1).

**220.0161 Mail Order Merchandise.** There are a number of merchandising programs which involve major oil companies, major airlines, and others who enter into agreements with direct mail order firms for the sale of merchandise to customers of the oil companies, etc. Under these programs, brochures and other sales literature promoting various products are mailed to the customers of the oil companies, etc., in an envelope with the customer's periodic credit card statement. Purchases of the advertised products can usually be charged to the customer's credit card. The merchandise is generally shipped to the purchaser by the mail order firm. The oil companies, etc., receive compensation based on the volume of sales generated.

It has been concluded that the oil companies, airlines, etc., should be held as the retailer provided that all of the literature and order forms lead the customer to believe that this is the party with whom they are contracting. If the literature identifies the mail order firm as the seller, that party must be held as the retailer.

In the latter situation, the oil companies, etc., will be considered the agent or solicitor of the mail order firm if the solicitation is from a California location, and the mail order firm will be considered to be engaged in business in California. On the other hand, if the solicitation by the oil companies, etc., is from a location outside California, there will be insufficient participation within this state, and the mail order firm will not be considered as engaged in business in California. The fact that the solicitor or agent may be engaged in business in this state on its own behalf is insufficient participation. Additionally, when a mail order firm contracts with two or more oil companies, etc., and it is disclosed as the seller, it can be held liable for collection of tax on all of its sales in California notwithstanding the fact that the sole solicitation in this state relates to only one of the parties with whom the mail order firm has contracted. 11/19/76; 7/10/96.

**220.0162 Maintaining an Inventory.** An out-of-state seller that has agreed to provide and maintain merchandise inventory at certain locations (of others) in California and that has representatives who make periodic calls at such locations to provide prominent point of sale display of some of the merchandise, is "engaged in business" in California. The seller is required to collect use tax on direct mail-order catalog sales to California consumers even though the activity creating the nexus may be unrelated to the mail-order sales. It is not necessary that the mail order sale be made as a result of local intrastate activities of the seller for that

seller to be required to collect and remit the applicable use tax. 9/26/72. (Am. M98-3).

**220.0163 Marketing Representatives Visit California.** An out-of-state company has two manufacturing divisions that are also located out of state. One of the divisions sent marketing representatives within the State of California six times over a three-year period. The purpose of these visits was to meet both customers and non-customers of the division to conduct informal market surveys within California regarding the use of the division's products. The purpose of the survey questions was to identify customer needs that the division could better serve. No product orders were taken or filled by the marketing representatives during these visits. These trips averaged over a week and occurred once during the first half of each year and once during the last half of each year.

The activities of the representatives in California are clearly selling activities coming within section 6203(b). Making personal contact with customers to identify their needs with respect to the company's products is clearly a selling activity. Contacting non-customers regarding the retailer's products is also clearly a selling activity regardless how the contact is characterized. The physical presence in California related to maintaining or enhancing the retailer's market in California is the substantial nexus with California that supports the State's imposition of a use tax collection duty on the retailer. Accordingly, the out-of-state company is a retailer engaged in business in California within the meaning of section 6203(b) (including all of its divisions). 1/15/97. (Am. 2001-3).

**220.0165 Nexus Out-of-State Newspapers/Periodicals.** Under both California statutes and Supreme Court precedent, any newspaper or periodical publisher maintaining a news bureau in California has nexus in this state and would be obligated to collect use tax on its taxable sales. 7/19/91.

**220.0170 Orders Sent to Local Television Station.** Where an out-of-state seller advertises on a California television station and the advertisement provides for orders to be sent to the television station, the seller is required to collect use tax on sales to California customers even though the television station merely forwards the orders to the out-of-state seller. The television station is acting as an agent of the seller in this state in an effort to exploit the consumer market in California. 2/2/77.

**220.0175 Out-of-State Auctioneer.** A public auction is held in Kentucky for mining equipment located in several different states including California. The auctioneer is not "engaged in business" in California. Since the auctioneer is not engaged in business in California, the owner's delivery of the equipment in California to a consumer or person for redelivery to a consumer, pursuant to the auctioneer's sale, is a retail sale in California by the owner. (Revenue and Taxation Code section 6007.) 1/3/90.

**220.0176 Out-of-State Printer Voluntarily Registered to Collect Use Tax.** An out-of-state printer chose to voluntarily register with the Board as a retailer under section 6226. One of its clients has retail outlets in Oregon, Washington, and California. This client frequently requests that printed matter be shipped directly to each of

its outlets. The printer wants to send a single bill to its client and have the client be responsible to self assess any California sales or use tax that may be owed.

Since the out-of-state printer chose to voluntarily register with the Board as a retailer, it is required to collect all use taxes due with respect to its sales to California consumers. (Regulation 1684(b).) There is no requirement that each of the California outlets be separately invoiced for each job. Thus, the issuing of a single invoice to the client is sufficient. For purposes of establishing a record of the printer's sales for use in California, these invoices should identify the products sold for use in California as well as the corresponding calculations of the use tax on these products. 11/14/96.

[220.0178](#) **Permits.** Company A and Company B form a partnership, Company C, for the purpose of manufacturing certain building components. C is not located in California, and A holds a California seller's permit. A is a selling agent for C. As long as A is C's selling agent, C is a retailer engaged in business in this state and must register with the Board. C is responsible for collecting use tax on retail sales in California and remitting the tax to the state. If, however, C is selling the property to A and A is reselling it on its own behalf, C would not be represented in this state and would not be required to register with the Board. A would be making sales and would be responsible for the payment of sales tax on the gross receipts from retail sales in this state. 3/31/94.

[220.0180](#) **Promotional Mail Address and Agent Meeting Place.** A promotional mail address and an occasional meeting place for west coast agents constitutes an "office or premises regularly used by a retailer for the transaction of business." 8/6/52.

[220.0190](#) **Post Office Box for Receipt of Orders.** An out-of-state photoprocessing company which distributes mailers in California and utilizes a California post office box for purposes of forwarding orders of its California customers is required to collect use tax due on the purchases made by California customers. 7/15/77.

[220.0194](#) **Public Warehouse.** A firm plans to store tires in a public warehouse in California. It will make its sales solely by mail order.

If all sales of goods located in the California public warehouse were sales in interstate commerce, no tax would apply and a seller's permit would not be required. However, even if all sales from the California warehouse were exempt sales in interstate commerce, the operation of that warehouse in California makes the firm a retailer engaged in business in California. Thus, the firm is required to collect use tax on its sales to California consumers, even if the property was shipped from a warehouse outside California. 10/28/80.

[220.0197](#) **Publishing Company.** A publishing company headquartered out of state operates two divisions. Division A makes retail sales of training aids in California through sales people who live and work in California. Division B sells exempt periodicals and clothbound books based on topics appearing in the periodicals. All orders for these books are sent to New York from where they are filled and shipped to California (or other state) buyers by mail. The Division A sales people

are not involved in the sale of Division B books, nor does Division B have any sales people, office, merchandise storage, or representative of any kind in California. Although operating as two divisions, the company is a single “person” for purposes of sales and use tax. Thus, the publishing company is required to collect and report use tax on the sales of Division B books to California consumers, even though the activity of Division A is what causes it to be “engaged in business” in this state. Once it is established that a seller is engaged in business in this state, the seller must collect and remit the applicable use tax for all its sales to California. 2/17/71. (Am. M98–3).

**220.0200 Registration Requirement.** The definition of “retailer engaged in business in this state” in section 6203(a) is entirely independent of the definition contained in paragraph (b). Hence, an out-of-state retailer who maintains an office or other place of business in California is required to register with the Board even though such office or other place of business is not maintained “for the purpose of selling, delivering, or the taking of orders.” 8/26/64.

**220.0220 Representatives—Activity of.** Section 6203(b) [now subdivision (c)(2)] does not require that the activity of local representatives be related to retail sales, but merely that the retailer have a representative here “for the purpose of selling, delivering or the taking of orders for any tangible personal property.” Accordingly, a retailer making mail-order sales to California consumers is required to register with the Board and collect the use tax even though its only in-state activity is the solicitation of sales for resale. 10/26/64. (Am. 2002–2).

**220.0221 Mail Order Catalogs.** The taxpayer installs a number of mail order catalogs on the premises of public libraries with whom he has made arrangements, along with a supply of universal mail-order forms. Persons coming to the library may examine the catalogs, make a selection of merchandise desired, fill out an order form, and deposit it in a designated space in the library. The taxpayer processes the order form to the appropriate retailer and receives a 10% commission from the mail order firm.

Under this arrangement, each of the mail order firms whose catalogs are displayed in the library is a “retailer engaged in business in this state” pursuant to section 6203(b) because the taxpayer is a representative operating in this state for the purpose of taking orders for tangible personal property. The mail order firms are responsible for collecting use tax on all retail sales of tangible personal property to California customers even if the order did not originate from the taxpayer’s catalog center. 12/2/85.

**220.0225 Mail-Order Sales from Out of State.** An out-of-state retailer with sales representatives in California was a retailer engaged in business in this state and was required to collect use tax on its mail-order sales to California consumers, even though it did not engage in any local activity with respect to the mail-order sales. 10/20/70.

**220.0232 Manufacturer’s Representatives.** There are two common relationships that a manufacturer’s representative could have with the manufacturer. If the representative makes a retail sale of tangible personal property, the representative owes the sales tax, or is required to collect the use tax, even if the manufacturer

ships the property, per the representative's directions. If the representative solicits orders in this state as an agent for the manufacturer, these services make the manufacturer "engaged in business" in this state, and requires the manufacturer to collect the applicable use tax and pay it to the state. 9/9/93.

220.0236 **Out-of-State Fund Raising Organization.** An out-of-state fund raising organization's use of California school children to solicit sales of magazines and records was sufficient to require it to register with the Board and collect use tax on the sales made by the children. Once the children commenced solicitation, they were acting as agents under the authority of the organization. 8/22/89.

220.0237 **Personam Jurisdiction.** If there is sufficient nexus to impose a collection responsibility on an out-of-state retailer, *personam jurisdiction* exists to allow the Board to enforce these laws and collect on the debts. 12/24/87.

[220.0237.500](#) **Photographs Taken in State.** An out-of-state printer is not considered "engaged in business in this state" by merely hiring an unrelated photographer to take photographs in California and to then send the photographs to the printer outside of California. Likewise, if the printer shoots the photographs in California himself and does not perform any selling activities while in California, the printer is not considered "engaged in business in this state."

However, it would be unusual for a printer to visit a customer to take photographs and have no additional interaction or discussion which is related to the sale and purchase of the printed matter. If the printer or his representatives engages in any activities beyond photography which constitutes selling activities, such as soliciting sales, taking orders for sales, or making contracts for future sales, the printer will be considered engaged in business in California. 8/1/97. (M98-3).

[220.0238](#) **Promotional Software Sent to Customers.** The retailer will send a promotional software listing of its products on a floppy diskette to its three largest customers in California. The retailer will retain title to the licensed software.

If the floppy diskettes are a mere substitute for the more traditional products catalog, the diskettes would not, in themselves, cause the retailer to be engaged in business in California within the meaning of section 6203. 12/5/94.

220.0241 **Representative Accepting Payment in State.** Two foreign corporations, who are in the equipment rental business, are in the process of liquidating their business through an auction. This auction will be conducted live from an out-of-state location and will be transmitted simultaneously via satellite to various cities including one city in California. All of the property for sale is located outside of California. If a bidder in California is the high bidder, he will immediately pay the bid amount to a California representative of the seller. However, the bidder will be responsible for traveling to the out-of-state location to accept delivery of the property and to arrange transportation to the location of his desire.

The sale to the successful bidder in California will not be subject to sales tax because the sale transaction will not take place in California, but rather out of state upon delivery of the property to the purchaser. However, the seller is responsible for the collection of use tax. The seller is considered to be doing business in this state as set forth under section 6203(b), because of the presence of

a representative for the purpose of accepting orders for purchase. The presence here is intended to enhance and facilitate sales.

Section 6247 provides that tangible personal property delivered outside California, to a purchaser known by the retailer to be a resident of this state, will be presumed to have been purchased for use in California. Since the bidders submit their successful bids in California, it would be self-evident that the sellers should be aware that some, if not most, of these purchasers are California residents. In those cases where the sellers know, or should be aware, that a purchaser is a California resident, the sellers will be responsible to collect the use tax unless they in good faith accept a statement from the purchaser to the effect that the property has been purchased for use outside California. 3/21/86.

**220.0242 Representatives Entering California to Solicit Sales Leads.** A manufacturer of computer software sells throughout the United States. The company is domiciled outside of California and does not maintain an office, assets, inventory or employees in California. The company attends trade shows occurring fewer than three times per year, in California where leads are identified. The company employs sales representatives who enter California twenty-five to thirty times per year to call upon specifically identified leads to solicit sales, meet with specific prospects, and to maintain relationships with existing customers.

This company is a retailer having substantial nexus with this state and is engaged in business in this state. 8/25/92.

**220.0245 Retailer's Trips to California.** An out-of-state company maintains a single business facility which is outside California. California customers mail or fax orders to the out-of-state location. The company ships its goods to the California customer via common carrier; these sales occur outside this state so that California sales tax does not apply. The company's employees travel to California to visit customers and check on product performance at customer plants once or twice a year on a regular basis. The purpose of these visits is to meet customer employees and to better understand customer's technical needs so the company can provide better service.

The company's activities inside this state relate to the sale of tangible personal property. The trips to California provide it with knowledge of anticipated customer needs through evaluation and customer performance. The trips also act to further establish its relationships with California customers and make possible the realization and continuance of valuable contractual relationships resulting in sales. These activities in California are therefore related to the sale of tangible personal property and make the company a retailer engaged in business inside this state within the meaning of section 6203(b). 2/9/96.

**220.0248 School Acting as Solicitor for Out-of-State Retailer.** An out-of-state retailer makes arrangements through school principals to solicit orders for its merchandise from students. The school principal signs a form letter agreeing to participate in the program and to display the sample merchandise to be sold. Orders and payment for the merchandise are taken by the teachers and forwarded to the out-of-state retailer. Although the out-of-state retailer specifies suggested retail selling prices, the school can charge the students any price they want. The only relevant

pricing requirement is that the school must remit the “wholesale price” to the out-of-state retailer. The out-of-state retailer packages the orders by homeroom for easy distribution by the teachers. For its participation in the program the school receives an award depending on the amount of sales generated.

Under this scenario, the school, through its principal and teachers, is acting as the agent for the out-of-state retailer for the purpose of making sales to California consumers. The out-of-state retailer is therefore engaged in business in California and required to collect the use tax from purchasers and remit it to the Board. 7/26/93.

**220.0249 Software Training Sessions.** An out-of-state firm with no employees, inventory, or assets in California has sold less than 10 packages of software. One of the packages was sold to a California firm. The sale was generated through contacts at a trade show or through referrals by sales representatives of other software vendors. All property was delivered by common carrier. As part of the sale, the company sends an employee to the customer’s place of business to conduct a two-day seminar.

The training seminar is a clear and definite presence in this state related to a specific sale of tangible personal property. The company is engaged in business in California within the meaning of section 6203(b). Also, it appears that the activities of the firm’s representatives in this state on its behalf may be an independent basis for regarding the firm as engaged in business in California within the meaning of section 6203(b). 12/15/95.

**220.0250 Subsidiary.** Parent Corporation is the sole shareholder of a subsidiary (“X”) which consists of out-of-state department stores and a direct mail order operation (“A-B”) with some California customers. The fact that Parent is also a manufacturer and wholesaler of paper products, sold by another subsidiary (Marketing) which does business in California does not mean that “X” is a “retailer engaged in business in this state,” as provided in section 6203 in that neither Parent nor Marketing sold, delivered or took orders of tangible personal property on behalf of “X” or its direct mail order operation “A-B” and there are no inter-company transactions or inter-operational or financial involvements or relationships. Accordingly, “X” is not responsible for the collection of California use tax with respect to its catalog sales shipped by mail or common carrier to California purchasers. 10/23/78.

**220.0253 Support Services.** An out-of-state retailer sells component parts that are used in a variety of high technology industries. A representative of the retailer occasionally travels to California to provide on-site engineering support services for products purchased by the retailer’s California customers. The representative does not take orders from customers while in California.

A person does not have to accept actual orders to be regarded as present in California “for the purpose of selling.” The representative’s presence in California is directly related to the retailer’s sales of products to California consumers and enables the retailer to maintain or expand the market for its product in this state. Accordingly, the retailer is regarded as engaged in business

in California and must collect the applicable use tax from its California purchasers. 7/30/99. (Am. 2000–1).

**220.0256 Telecommuting In-State.** An out-of-state web-based retailer who is not engaged in business in California hires a website designer who telecommutes from his home in California. The designer is responsible for improving the quality of communication in the company’s websites. The designer is responsible for graphic design, information design, interface design, usability testing and evaluation, documentation, special projects, teaching, consultation, and quality assurance. The designer does not have any contact or involvement with the retailer’s customers and is not involved with the actual orders placed by customers.

Since the only business activities conducted at the designer’s home are telecommuting activities included in his job description and no portion of the home is in anyway held out to be what could be called a business location of the out-of-state company, such as the placement of a sign out front or the holding of classes at the home, the out-of-state retailer would not be regarded as engaged in business in California. 6/21/99. (Am. 2000–1).

**220.0260 Telephone Service.** An out-of-state retailer who has orders taken by an “800” telephone number service located in California is a “retailer engaged in business in this state.” The “800” telephone number service is a representative operating in this state under the authority of the retailer for the purpose of taking of orders as provided in Revenue and Taxation Code section 6203(b). Accordingly, such out-of-state retailers will be required to register with the Board and collect and report use tax on sales of tangible personal property to consumers in California.

If an order for an out-of-state retailer is taken by an “800” telephone number service located in California and the property is sent from an out-of-state location to an in-state location, use tax will apply.

Retailers located in California will be required to report and pay either sales or use tax whenever a taxable sale is made to a California consumer for delivery in this state. If delivery is from within California to an out-of-state location, tax will not apply provided the property is shipped to the out-of-state location by facilities operated by the retailer or by delivery to a carrier, customs broker, or forwarding agent for shipment to such out-of-state location. This would be true whether or not the order was placed by an in-state or out-of-state consumer.

If the consumer is located out-of-state, the retailer is located out-of-state, and the property purchased is sent from the location of the out-of-state retailer to an out-of-state location, neither sales nor use tax will apply to the sale even though the order is placed through an “800” number located in California. 1/30/81.

**220.0270 Trade Shows—Presence in this State for Purpose of Selling.** An out-of-state retailer attends one show a year in California in order to solicit orders for knives. When an order is taken, the retailer takes a down payment, a payment in full, or will bill the customer later. The knives are always shipped to the buyer from a point outside California. Since the retailer enters California for the express

purpose of making retail sales, it is regarded as a retailer engaged in business in this state. The retailer is required to collect use tax. 2/10/95. (Am. 2003–3).

(Note: Subdivision (e) was added to Revenue and Taxation Code section 6203, effective April 1, 1998, and further amended operative January 1, 2001, to add an exception from the definition of “retailer engaged in business” for specified trade show activities.)

**220.0280 Training Course—Nexus with California.** A out-of-state company is engaged in the sale of prewritten software and software licenses. It maintains no offices or warehouses in California. The company executes its license agreements with its customers out of state. As a result of the license agreement, the company transfers tangible personal property for consideration in the form of computer disks to customers located in California. The customers use the software inside California by installing and running the programs on their computers. These customers owe use tax on the purchase price of the software they purchase.

Independent of the software sales, the company offers a 3 1/2 day software training course which is taught one to three times a year in California. The course attendees do not need to have purchased software licenses from the company, and many have not. The purchase of the software license does not entitle one to attend the course, and, conversely, course attendance does not provide a software license. The software does not in itself require training. The company rents computers for use during the training course and provides the instructor, or facilities are provided by the company’s customers who want to offer the training course.

The company’s physical presence inside this state through its teaching of software classes is related to the sale of the very software for which the classes are offered. The company’s activities inside this state create nexus with California and make it a retailer engaged in business inside this state. The company is engaged in business inside this state and is, therefore, required to collect use tax from its customers. 10/20/97. (M99–1).