

480.0000 RETAILER

See also Auctioneers; Automobile Dealers and Salesmen; Occasional Sales— Sale of a Business—Business Reorganization; Service Enterprises Generally.

480.0020 Agent Importing Automobiles. An agent who contracts with his principal to arrange for the purchase of an automobile from a foreign manufacturer or distributor and for its importation and delivery to the principal is not a retailer where title vests directly in the principal overseas and the agent renders a final statement of account showing all disbursements made on behalf of the principal and the amount of his commission. 1/17/66.

480.0022 Beauty College. A beauty college charges \$1600 tuition for a prescribed course in cosmetology. This lump-sum charge includes 1699 hours of training and a textbook, printed material, and supply kit consisting of a curling iron, blow dryer, brushes, scissors, and hair razor. The beauty college purchases the items tax paid at source. Total cost to the beauty college for all of the above is approximately \$75.

Under the circumstances, the beauty college's tax liability is extinguished by paying tax at source. The college provides extensive classroom instruction and the cost of the materials is less than 5% of the tuition charge. Also, the college purchases the material in fabricated form. Thus, there is no fabrication labor which escapes taxation. 1/31/80.

480.0025 Buying Groups. A group of doctors form a corporation for the purpose of buying ophthalmic supplies. Vendors have oral agreements with the corporation that the buying group will pay for the supplies ordered by its member doctors. The member doctors receive a list of vendors who have agreed to bill the buying group at quantity discount prices. The doctors do not receive the discount unless the billing and payment is handled by the buying group. The doctors have a written agreement with the buying group which sets out the terms of payment by the doctors. Under these circumstances, the buying group is the retailer of the ophthalmic supplies purchased by its member doctors and is required to hold a seller's permit. 11/16/88.

480.0027 Card Lock Fueling Systems—Out-of-State Participant. Owners of unattended card lock fueling stations formed a network whereby their customers may purchase fuel at any of the network's participating fueling stations by use of a credit card issued by its card lock station. The network includes participants who do not operate in California except for network transactions to its customers in California. There is a network clearing house for tracking and reporting the participant's fuel purchased by a participant's customer at card lock fueling stations operated by other participants.

Under this scenario, the credit card issuer (Foreign Participant) has actually contracted to sell fuel to the card holder and purchases the fuel from the Host Participant for resale. Accordingly, the Foreign Participant makes the retail sale and the Host Participant delivers the fuel on behalf of the Foreign Participant. The Host Participant is considered making taxable retail sales under section 6007 until the Foreign Participant registers with the Board as a retailer. 7/3/89.

480.0028 Catering Truck Operators. When a catering house hires a person to operate a catering truck to sell products on behalf of the catering house, the catering house rather than the operator of the truck is the retailer responsible for reporting and paying sales tax on the sales. Whether the catering house hires the operator to sell products on its behalf or the operator purchases property from the catering house for resale is a question of fact which is answered by the relevant evidence. For example, the catering house's paying a salary to the truck operator and making normal withholding from the salary for social security taxes, income taxes, unemployment insurance, and worker's compensation, is strong evidence that the catering house is the retailer of the property.

The following is evidence which indicates that the truck operator is the retailer. No one factor is determinative; the Board will make a determination based on all facts available.

(1) The contract between the catering house and the truck operator specifies that the operator is an independent contractor.

- (2) The operator is not required to purchase all food and supplies from the catering house.
- (3) The truck operator is not required to provide an accounting to the catering house for the operator's receipts. Rather, the income from the sales belongs to the operator.
- (4) The operator prepares a Schedule C for income tax purposes.
- (5) The truck operator rather than the catering house determines the sales price of the property for sale. 12/31/93.

480.0030 **Chiropractors—Vitamins.** Effective January 1, 1979, licensed chiropractors will be considered consumers with respect to vitamins, minerals, dietary supplements, and orthotic devices used or furnished by them in the performance of their professional services regardless of whether or not a separate charge is made when these items are supplied to their patients. If other types of items are sold by chiropractors and a separate charge is made, they will be considered the retailers of the items. 10/26/78.

[480.0040](#) **Correspondence Course—Books and Lesson Materials.** An out-of-state agency which sells correspondence school courses is a retailer of the lesson materials and books regularly sold to its students and is liable for collection of use tax on the fair retail selling price of the materials and books. 11/19/65.

480.0060 **Creditors.** Where by contract, creditors of a retailer agree to assume control, acquire possession and operate the retailer's business for a definite period, such creditors become a retailer as defined in section 6015. 3/5/54.

[480.0080](#) **Dealer Aiding Purchaser from Third Party.** Where an airplane dealer aids a prospective purchaser in locating and purchasing an airplane from a third party by locating a willing seller, having the plane brought to his place of business, or aiding the buyer in examining the plane and in addition obtains financing for the buyer by executing a conditional sales contract as the seller and discounting it with a bank with recourse he is the retailer of the plane and makes a taxable sale. 3/29/65.

480.0082 **Distributors for a Section 6015 Retailer.** A person is a distributor for a "section 6015 retailer" and also makes sales of other property. The person is required to hold a seller's permit and to report separately the retail sales of other property. 5/1/95.

480.0085 **Drop Shipments—Payment of Tax Directly by Consumer.** A California taxpayer sells property to an out-of-state retailer who is not engaged in business in this state. The retailer directs the taxpayer to deliver the property to a California consumer. The consumer informs the taxpayer that it self assesses the tax and provides the taxpayer with its seller's permit number.

Under section 6007 of the Revenue and Taxation Code, the taxpayer is liable to the Board for the tax. The mere statement by a consumer who is a permit holder that it self-assesses the tax does not relieve the taxpayer from liability. The taxpayer will be relieved of liability if it can show that the consumer has actually paid the tax to the Board. 8/9/94.

480.0091 **Equipment Purchased from Retailer.** A California contractor ordered a special woodworking machine that is only manufactured in England. The manufacturer made sales only to retailer's located in England (sales for resale) except for one sale made to a California contractor.

Even though the manufacturer only made sales for resale to its customers located in England, the manufacturer is a retailer under section 6015 by virtue of making a retail sale to the California contractor. Therefore, the sale to the contractor is not considered an occasional sale and the contractor owes use tax on the purchase price of the machine. 3/17/95.

480.0095 **European Delivery of Motor Vehicle.** A person orders a car, which is manufactured in Europe, through a California dealership for delivery in Europe. The dealership arranges the delivery through the

automobile manufacturer's corporate representative in the United States. The dealership has the customer fill out a standard purchase order form, showing the dealer as the seller of the vehicle. The order form is signed by the customer. The dealership also has the customer execute a form called "Delivery in Europe Car Order" which specifies the date and place requested for the delivery. This latter form states that the customer is ordering the vehicle from the manufacturer's corporate representative. Either the dealership or the customer sends this to the representative. The dealership and the manufacturer's representative have actual knowledge that the purchaser was a California resident, and that the vehicle would be shipped to California within 90 days of the delivery in Europe.

Since the "Delivery in Europe Car Order" identifies the manufacturer's representative as the seller, there is a strong case for treating that company as a retailer responsible for collecting the tax. However, other evidence indicates that the dealership is also a retailer. The dealership is an independent contractor which apparently has no agency agreement with the manufacturer's representative. It handles all negotiations with the customer and prepares standard purchase orders showing itself as the seller. It collects payments from customers and arranges for shipment of the vehicles to California. In the manufacturer's sales literature and internal documents, local dealers are referred to as sellers.

Both the dealership and the manufacturer's representative are acting as sellers and retailers of these vehicles and, since they are acting in combination as a unit, they can be regarded as a single person for sales and use tax purposes. Therefore, the duty to collect use tax could properly be asserted against either company or both.

Other factors affecting whether the dealership or the manufacturer's representative is the retailer are as follows:

- (1) Does the dealership record these transactions as purchases and sales on its books?
- (2) Does the manufacturer's representative in fact set the price, or does it merely "approve" the price negotiated by the dealership?
- (3) Does the dealership accept trade-ins?
- (4) If sales are financed, how is the financing arranged?
- (5) If commissions are involved, how are they determined?
- (6) Other pertinent information from the manufacturer's representative instructional pamphlet. 1/13/86.

480.0100 **Farm Labor Contractor.** Under section 13(a)(2) and 13(a)(20) of the Fair Labor Standards Act (29 U.S.C.A. section 213(a)(2), 213(a)(20)), employees of "retail establishments" are exempt from coverage of the act. Pursuant to the decision of the U.S. District Court in *Mitchell v. Anderson*, 235 F.2d 638, the Wage-Hour Administrator in an opinion dated November 7, 1961, has concluded that kitchen employees of a farm labor contractor serving meals to Mexican Nationals employed by farmers, are not employees of a "retail establishment." Although, for the purposes of the Fair Labor Standards Act, the contractor is not a "retail establishment," nevertheless, the contractor is a "retailer," as defined in section 6015 of the Revenue and Taxation Code, whose gross receipts from sales of meals are subject to sales tax. 12/11/64.

[480.0115](#) **Investor vs. Retailer—Guidelines.** The law presumes that the gross receipts from the sales are subject to sales tax and that property shipped or brought into this state by the purchaser was purchased from a retailer for use in the state. Specifically, sales of tangible personal property to persons who hold the property for investment purposes or who hold the property as part of a collection are retail sales.

The following criteria will be considered in determining whether a person is holding property for resale in the regular course of business or is holding property for other purposes. The criteria are generally the same

as those in Sales and Use Tax Regulation 1599 pertaining to the purchase of coins and bullion as an investment.

(1) Whether the person has a place of business or otherwise clearly holds out to the public that he or she is engaged in the business of making retail sales of the type of property in question.

(2) Whether or not the person has records typical of a normal business (e.g., accounting records, advertising, letterhead stationary, business cards, or letterhead invoices).

(3) Whether the person has established suppliers of inventory.

(4) Whether the person makes sales sufficient in number, scope and character to require the person to hold a seller's permit for the sale of the type of tangible personal property in question.

(5) Whether the person does, in fact, hold a business license and seller's permit for sales of the tangible personal property in question.

(6) Whether there is evidence of merchandise available for sale to the public with discernible sales prices.

(7) Whether the person's markup over cost is an amount which shows a reasonable expectation of sale.

(8) Whether the person treats the activity as a business for income tax purposes and regularly reports income from the activity. 12/31/93.

480.0120 **Jobbers.** All of the sales made by jobbers on behalf of an office supply corporation are taxable to the corporation where all sales solicited are in the corporation's name on order forms approved by the corporation; the right to accept or refuse an order or make other adjustments remains with the corporation; all bills and invoices are made by the corporation; title to merchandise remains with the corporation; payment is made directly to the corporation, unless otherwise authorized, and any payment made directly to the jobber is the property of the corporation, and the jobber may not use the corporation's name unless specifically authorized. Although the jobbers are independent firms which handle products of other manufacturers when they are soliciting for the corporation in question, they are not selling on their own behalf, and thus are not liable for the tax. 4/19/67.

480.0140 **Number of Sales.** A transfer of tangible personal property which is exempt as a section 6006.5(b) "occasional sale" is not one of a series of sales to be counted in determining whether the transferor is a retailer under section 6019 of the Revenue and Taxation Code. 2/2/65.

480.0160 **Number of Sales.** Section 6019 does not limit the definition of "retailer" in section 6015. It is another definition of a "retailer" applicable to those persons making more than two retail sales in any 12-month period, and does not include as a necessary element the "engaging in business," which is common in the definition of "seller" under section 6014.

Sales by a person may not be sufficient to bring him within the scope of section 6019, yet such sales may be of a kind the gross receipts from which are includable in the measure of the tax. This may be true, even if the sales were of products specifically exempt from tax by reason of the use to which such products were put, not to the kind of products sold. Under the latter situation, the seller is required to have a permit and sales of property used in the activity would not be occasional sales, but subject to tax. 12/4/53.

480.0193 **Optometrist Buying Group.** A group purchases optometric supplies for its member doctors. If the facts are as follows, the group would not be considered a retailer and would not be required to obtain a seller's permit:

(1) The invoices of the group's vendors show the member doctors as the purchasers.

(2) The group has agreements with the vendors which provide that if the group does not pay the vendors, the vendors have the right to seek payment for the supplies directly from the member doctors.

(3) The group pays the vendors for the supplies ordered by a member doctor only after it receives payment from the member doctor.

If these are not the facts, the group is a retailer, not merely a billing agent, with transactions structured as sales by the vendor to the group with immediate resale to the member doctors, and the shipping arrangements are standard drop shipment from the vendor to the group's customers, not to the vendor's customers. 10/11/89.

480.0200 Out-of-State Seller. A seller who makes retail sales outside this state is properly regarded as a retailer under Revenue and Taxation Code section 6015(b) (now section 6015(a)(2)). Thus the use tax applies with respect to property purchased from out-of-state firms clearly engaged in the business of selling tangible personal property at retail, even though their activities are confined to states other than California. 7/17/57; 6/26/02. (Am. 2002-3).

480.0204 Overpayment of Tax by Section 6015 Retailer. A section 6015 retailer collects tax reimbursement on all of its sales to its "consultants." In some cases, the consultant's retail customer is located outside of California and the product is shipped by the consultant to the out-of-state customer in accordance with the contract of sale. The consultant also sells items for less than the suggested retail price. A refund of any tax overpaid on such sales that the section 6015 retailer can document may be refunded to the section 6015 retailer subject to the requirement in section 6901.5 that the tax reimbursement be returned to the person(s) paying it. 8/26/96. (Am. 2000-1).

480.0207 Personal Liability of Assignee. While an assignee for the benefit of creditors like a trustee in bankruptcy is a "person" under California Revenue and Taxation Code section 6005, and while an assignee and a trustee in bankruptcy may be a retailer under section 6019, both an assignee and a trustee act in representative capacity and have no personal liability. Any tax liability is the liability of the debtor estate only. 2/5/91.

480.0210 Publishers Advertising Beauty Products. An advertisement for beauty products is contained in a publication. The end of the advertisement, in fine print, states that the payments are received on behalf of "beauty sampler participants" featured in the advertisement. The purchasing instructions were printed beside a tear-out card which stated in part to simply check your Beauty Collection choices on the attached card (or a separate piece of paper) and mail along with your remittance to the publisher at an Ohio address. On the card itself was an "800" number for telephone orders. The entity handling the telephone and mail orders is a wholly owned subsidiary or division of the publisher.

The addition of the fine print matter does not remove the publisher (or its subsidiary) from being a retailer. Prospective customers have no reason to believe that they are purchasing from or dealing with any entity but the publisher. The checks are made out to the publisher and mailed to the publisher at an Ohio address. The telephone number is the publisher's and the extension goes to the subsidiary or division of the company. 7/27/93.

480.0220 Radio and Television Stations. Radio and television stations may become retailers and subject to sales tax with respect to mail order sales of merchandise made as a result of advertising made over such stations as follows:

(a) The merchandise sold is mailed directly to the purchaser from a point outside California. Payment is made either C.O.D. or is sent with the order to such stations.

(b) The aforesaid sale has been initiated when the advertising directs the prospective purchaser to place an order by telephoning a certain number and this number is that of the station and is serviced by station employees and the advertising does not disclose the identity of the out-of-state seller.

(c) Like principles apply to orders received at such stations by mail. 12/4/53.

480.0240 Rental of Display Area. The rental of display area to private owners of used cars for the sole purpose of providing space where such owners may display their vehicles, the owners to conduct all sales activities themselves, does not constitute the lessor a retailer of such vehicles subject to sales tax. 7/6/53.

480.0250 Retailer. A manufacturing firm has independent dealers located in Montana and Oregon. The dealers entered California on a regular basis to take orders. The dealers did not have to obtain the manufacturer's approval for an order. In some transactions the customers named the dealer as the payee on the check. The dealers set the selling price. In some cases, when the customer rescinded the transaction, the dealer refunded the money directly or arranged for the return of the property.

The manufacturer's name and address, not the dealer's, was prominently printed on the sales invoice. All credit card payments were made through the manufacturer's account. In some transactions, the deposit payable was made to the manufacturer. The manufacturer notified the customer when the property was to be manufactured or shipped. Although the manufacturer did not require approval of an order, it was not necessary since the manufacturer obtained payment before sending the property.

Under these circumstances, the manufacturer is the retailer and is required to collect use tax since it had representatives operating in this state. 4/25/95.

480.0251 Retailer. If a person sells a used hammer and makes no other sales during any twelve month period in which the sale of the hammer occurred, that person is not a "seller" and the sale of the hammer is an exempt occasional sale. However, if that person had opened a hardware store, made a single sale of a hammer to a consumer, and then closed down, the person would be a seller and the sale of the hammer would be a taxable retail sale because the person would have been in the business of selling tangible personal property, even though only one sale had been made. 10/23/92.

480.0290 Sales of Catalogs. A firm publishes a catalog which lists mail order catalogs from a variety of unrelated mail order firms. It receives orders for the mail order catalogs together with a payment. It forwards the order to the specific mail order firm which, in turn, mails the catalog to the customer.

The firm publishing the catalog which lists the mail order catalogs is the retailer of the catalogs furnished. The sales of the catalogs are subject to tax. 1/27/92.

480.0300 Sales to Independent Distributors. Under section 6015(b) a manufacturer of cosmetic products may be treated as the retailer of products sold by independent distributors upon approval of the Board of Equalization. After approval and written notification from the Board, the manufacturer is responsible for reporting and paying tax on the sales price charged by the independent distributor. 1/20/93.

480.0306 Sales of "Personal Picture" Certificates. A California taxpayer sells to customers "personal picture" certificates which are redeemable for personalized picture items such as personalized calendars, business cards with picture, postcards, etc. The taxpayer purchases the certificates from a supplier located out of state. The customer mails the certificate (along with a picture and text) to the out-of-state supplier. The supplier then ships the finished product directly to the customer on the taxpayer's behalf.

Under these facts, the taxpayer is regarded as the retailer of the personalized calendars, postcards, etc., purchased by the customers. Under this arrangement, title to these items passes from the out-of-state supplier to the taxpayer (and then from the taxpayer to the customer) outside this state when the out-of-state supplier completes its responsibilities with respect to physical delivery of the property. (See Cal. U. Com. Code section 2401.) Since title to this property passes outside this state, the taxpayer's customers owe use tax measured by the purchase price of the property. The taxpayer is responsible to collect this tax from its customers and remit it to the Board since the taxpayer is the retailer of these goods. (Section 6203.) 7/02/96.

480.0310 **Sales of Share Drafts.** The following statement on order forms is insufficient to establish a printer rather than a credit union is the retailer of share drafts:

“To: (name of share draft supplier)
c/o (credit union)

This will authorize you to charge my credit union share draft account for the cost of delivered share drafts ordered, plus California sales tax.” 7/23/81.

[480.0355](#) **Section 6015 Retailers—Resale Certificates from Agents.** Sales and Use Tax section 6015(b) allows the Board to regard any salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them. The dealer, distributor, supervisor or employer is then regarded as the retailer of the tangible personal property sold through their agents. The section 6015 retailer collects sales tax on the retail selling price of its merchandise when the merchandise is sold to the agent.

Although the Board may choose to regard a dealer, distributor, supervisor or employer as a retailer, it does not necessarily follow that the Board must regard all of the retailer’s salesmen, representatives, peddlers or canvassers as an “agent” of that retailer without exception. If a section 6015 retailer’s designated agent holds a seller’s permit for a different business and has a storefront for that business, section 6015(b) does not prohibit the Board from authorizing that agent to issue a valid resale certificate for tangible personal property that the agent is purchasing from the 6015 retailer. 7/8/03. (2004–1).

480.0385 **Shopping Services.** A shopping service for individuals who lack the time or skills to shop for themselves purchases tangible personal property and pays the full retail price plus tax. The price charged to its clients includes the full retail price, plus a service charge for the labor in obtaining the item.

The shopping service is a “retailer” as defined in section 6015. It is transferring title to tangible personal property to its clients who are the consumers of these items. The gross receipts from the shopping service’s sale of the property to its clients is the total price charged to the clients including the service charges for the labor in obtaining the property. 11/4/86.

480.0400 **Single Sale.** A person in the business of designing and manufacturing custom machinery made only one sale, which was a retail sale, during a twelve month period. This sale is subject to tax since the person is in the business of selling tangible personal property and is therefore a “seller” pursuant to section 6014. Once a person is a seller, that person is automatically a retailer whenever he or she makes a retail sale. 10/16/92.

480.0700 **Special Order Placed for Customers.** A taxpayer conducts a business for the taxpayer’s customers of obtaining stereo and related equipment by way of mail order from out-of-state suppliers. A customer will complete an order agreement whereby the customer agrees to the terms and price of the piece of equipment. The taxpayer then calls an out-of-state supplier and places an order for the equipment. The supplier ships the equipment C.O.D. to the taxpayer. Upon receipt of the merchandise, the taxpayer informs the customer who then picks up the merchandise at the taxpayer’s place of business. At the time of pick up, the customer pays for the merchandise a price which consists of the cost of the merchandise, shipping and handling, and a percentage mark up.

The facts involved in this situation are similar to that of a catalog store or a “special order” placed for a customer by a department store. In both of these situations, the sale which takes place when the item ordered is delivered to the customer is a retail sale. Therefore, the taxpayer is a retailer of the merchandise it orders and then transfers to its customer, and tax applies to the total gross receipts of such sales. 2/22/78.