STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6450

August 25, 1992

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XXX --- Street
--- ---, CA XXXXX

Gentlemen:

This is reply to your June 18, 1992 letter regarding the collection of California use tax by your client. You noted the following facts:

> "Our client manufacturers and sells computer software throughout the United States in the form of boxed software with a shrinkwrap license and limited-site licenses. They sell almost exclusively to corporate customers and institutions who are likely to have reported use tax to the state. The client is domiciled outside of California, and does not maintain an office, any property, inventory, or employees within California. The Company advertises in national trade journals which generate leads via telephone and mail responses. A telemarketing group, located outside California, qualifies these leads, and determines whether they represent probable purchasers. Our client also attends trade shows in California, where leads are identified. These trade shows occur fewer than three times per year.
>
> "The Company employs sales representatives, who are not residents of California, whom call upon these specifically identified leads to solicit sales. In the past year, the level of activity in California has increased. These representatives enter California approximately twenty five to thirty times per year on an unscheduled basis to meet with specific prospects and to maintain relationships with existing customers. Each visit does not exceed one week. Occasionally, as part of the selling process, the vendor provides a presale training course to introduce a new product, and provides very limited post-sale training. Any sales made are approved at the corporate headquarters. Technical support is provided by telephone from the Company's offices. All order fulfillment is done by a third-party vendor and shipped from outside California to California customers."

You asked us to confirm your understanding that your client is not a "retailer engaged in business in this state" as defined in Revenue and Taxation Code 6203. You believe that your client's entries into California are limited and sporadic and do not establish "substantial nexus" as required by Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977) and Quill Corp. v. North Dakota, 1992 U.S. Lexis 3l23.

We disagree. We believe that a retailer which both attends trade shows in California and employs representatives who make 25 to 30 trips a year to this state has the substantial nexus with this state and is engaged in business in this state under subdivision (b) of 6203:

> "Any retailer having any representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any tangible personal property."

We do not believe that the Quill case calls for a different result. We believe the court clearly distinguished its holding in that case from other cases such as this which involve a physical presence in the state of a person against whom the state would impose a use tax collection duty.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr