

M e m o r a n d u m**325.0053**

To: Oakland – Auditing

Date: May 21, 1985

From: Headquarter – Legal
John AbbottSubject: Q--- (P--- R---) Corp – [no account number]
C--- S--- Co., Inc. – [no account number]
M--- Q--- – SR --- XX-XXXX
M--- D--- S--- – SY --- XX-XXXXXXX
Use tax collection – Installation in state

In your February 21, 1985 memorandum to Mr. Les Sorensen of the legal section, which was transferred to me for reply, you contend that Q--- (P--- R---) is engaged in business in California and is either required to collect use tax or pay sales tax on its sales to California customers, and you ask for our opinion on this matter.

You relate, in summary, that while Q--- itself has no place of business in California, it has an agent (C--- S--- Co.) located in California which solicits equipment orders from California customers and forwards the orders to Q--- for acceptance. When the order is accepted, the equipment is shipped and billed directly to the customer by Q--- although in some isolated instances, the shipment is to the agent for redelivery to the customer. While shipments are made by common carriers, F.O.B. --- ---, the agreements require Q--- to install the equipment at the customer's location and Q--- completes its installation obligation by contracting with related but separate corporations, either M--- D--- S--- Q--- or M--- D--- S---, to install the equipment.

Q---'s obligation to collect the use tax on its sales to California customers is clearly established by Revenue and Taxation Code section 6203. While the use tax is imposed on the purchaser, a retailer engaged in business in this state is obligated to register with the Board and to collect the use tax from the purchaser and pay it to the Board. Code sections 6203, 6226. If the retailer fails to collect the tax, it nevertheless constitutes a debt of the retailer owed to the state. Code section 6204; Bank of America v. State Board of Equalization, 209 Cal.App. 2d 780.

Section 6203(a) and (b) defines a retailer engaged in business in this state to include (among other things) a retailer who has an agent with a place of business in this state, or who has a representative or agent operating in this state under the authority of the retailer for the purpose of selling, delivering, or taking orders for tangible personal property. Q--- qualifies as such a retailer because of the presence and operations in California of either its sales agent or its installation agents. The broad reach, and constitutionality, of section 6203 and similar statutes in other states is illustrated by cases such as National Geographic Society v. State Board of Equalization, 430 U.S. 551; Scripto v. Carson, 362 U.S. 207; and Standard Pressed Steel v. Washington, 419 U.S. 560.

While our conclusion is that Q--- is required to register with the Board and collect the use tax liabilities of its California customers, we also conclude, based on the facts you present, that Q--- is not liable for sales tax on its retail sales in California. This is because Q--- itself (as distinct from its agents) has no place of business in California. Regulation 1620(a)(2)(A) provides in summary that the sales tax applies only if there is both a sale which occurs in California, and some involvement in the sale by a place of business of the retailer. The latter condition is not met when Q---'s installation agent, rather than Q--- itself, completes the delivery of the equipment in California by installing the equipment at the buyer's location.

JA:ss