

M e m o r a n d u m**325.0110**

To: Mr. Joseph J. Cohen
District Principal Auditor - Hollywood

Date: August 23, 1991

From: David H. Levine
Senior Tax Counsel

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Subject: T--- V---, Inc.
SR -- XX-XXXXXX

This is in response to your memorandum dated July 23, 1991. T--- purchased property from P--- and agrees that the purchase is subject to tax. However, T--- argues that the applicable tax is sales tax owed by P--- and not use tax owed by T---. You explain:

“T--- mailed their purchase orders to P--- in ---, New Jersey. P--- shipped the property to T--- in California. The only participation in California by anyone connected with P--- was the payment by T--- was mailed to a ---, California address of P---. Note – The invoice from P--- may have been prepared and mailed from their ---, California location, but there is no evidence of this. At this point we are assuming that the sale occurred in state after the property came into California.”

You believe that the mailing of payment to a California location of P--- is insufficient participation to assert the sales tax since P---’s only participation in California occurred after the sale. The initial step in this analysis is to determine whether the sale occurred in California. If it did not, sales tax does not apply. You note that you are assuming that the sale occurred in California. However, your statement of facts indicates that the sale occurred outside California, and the documentation you have provided us appears to confirm this conclusion. The bill of lading issued by C--- indicates that the consignee was T--- in California and that the shipper was P--- in Illinois. It appears that the contract of sale was for delivery by common carrier from Illinois directly to T--- in California. Assuming this is the case, title was transferred no later than delivery by P--- to C--- in Illinois. (U.C.C. § 2401.)

Subdivision (a)(2)(A) of Regulation 1620 provides that the sales applies when: 1) the order for the property is sent by the purchaser to a local branch or delivery of the property is made by the local branch; and 2) the sale occurs in California. We agree that the mailing of payment to a California location of the seller is not sufficient for the transaction to become subject to sales tax. Nevertheless, we believe that this is simply not an issue in this case since the facts and documentation indicate that the sale occurred outside California. We therefore conclude that the use tax applies to T---'s purchase.

If you have further questions, feel free to write again.

DHL:cl