



STATE BOARD OF EQUALIZATION

November 18, 1963

Gentlemen:

We regret the delay in responding to your letter of September 27, 1963.

It is our opinion that a factory branch located in another state may be considered as the "dealer located outside this state" within the meaning of section 6388 of the Sales and Use Tax Law even though the factory itself is located in California. The question of who is not a resident of California within the meaning of the section turns upon whether the purchaser is actively engaged in business in this state. Anyone so engaged is not considered to be a nonresident for purposes of this section.

In this respect we are guided by the decision in Garrett Corp. v. State Board of Equalization, 189 Cal. App. 2d 504, construing the term "resident" in another exemption section, section 6366 dealing with aircraft. The courts held that out-of-state corporations doing a substantial business in California were not nonresidents due to the fact that they had a factual abode of some permanency in this state. We believe similar principles should be applied in interpreting section 6388.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:fb

cc: Downey – Subdistrict Administrator