

M e m o r a n d u m**175.0150**

To: Mr. T. P. Putnam

December 23, 1975

From: Glenn L. Rigby

Subject: Section 6007

On December 15 we discussed the interaction of the last paragraph of Section 6007 and Regulation 1620(a) and (b).

The factual situation we considered follows: X, a Tennessee construction contractor, had a contract to furnish and install steel at a California location. Y, a Chicago firm not engaged in business in California, contracted with X to sell it the steel. X [typo, should be Y (DJH 7/27/82)] then manufactured the steel and pursuant to a contract it made with Z (a California retailer), it delivered the steel to Z, who in turn delivered it to X. Z was merely acting as an agent of Y, and it was not a branch or local office or other place of business of Y. Since title passed to X in California, the question to be decided is whether the transaction is subject to sales or use tax.

Notwithstanding the fact that title passed to X in California and that literally the last paragraph of Section 6007 would seem to indicate that Z would be subject to sales tax on the transaction, it was our conclusion that because of paragraph (a)(2)(B) of Regulation 1620 the only applicable tax that can be imposed is a use tax. However, since Z is the retailer under Section 6007, it is our opinion that he is required to collect the use tax from X and report it to the state.

Although it could be argued that the last sentence of the last paragraph of Section 6007 is only applicable to a sales tax transaction, it is felt that we should leave the question to the courts to decide and that we will therefore continue to impose the use tax collection responsibility on the person making the delivery.

GLR:lb

cc: Covina-Foothills – Dist. (IL)