

M e m o r a n d u m**175.0315**□

To: Mr. Charles Cordell
Out-of-State District Administrator

Date: July 30, 1982

From: Mary C. Armstrong
Legal

Subject: [X]

This is in response to your memorandum of June 16, 1982 concerning the following: 1) whether [X] is a retailer of merchandise, and 2) whether [X]'s activities in California are sufficient to support a finding of nexus with California.

As we understand it, [X] is a consumer service organization which arranges sales through vendors to its members. The members pay a \$25.00 membership fee to [X] which allows them to call [X] and check the price of merchandise. If [X]'s price is cheapest, the member can utilize the [X] system. [X] takes the member's order, contacts the vendor and instructs the vendor to ship the merchandise to the member. The vendor bills [X] and [X] in turn bills the member on his credit card. The invoice from the vendor states: sold to [X] ship to [X] member John Doe.

[X] also has a computer shopping service which has a few subscribers in California. When a member wishes to hook into [X]'s computer in Connecticut, he dials a local California number. The local number connects through a "node" (actually a small electronic box located in California) to [X]'s computers in Connecticut. The member can also call via wats line to a "node" in Columbus, Ohio. [X] receives a 2 to 3 percent commission from transactions made over the system.

We are of the opinion that [X] is the retailer of merchandise it orders for its members from various vendors. It takes the order, purchases the item from the vendor, directs the vendor where to ship the item, and bills the member for the item. Under these facts [X] is a "business" under Revenue and Taxation Code section 6013 and it will be considered a seller under Revenue and Taxation Code section 6014.

Although we would consider [X] to be a seller, we do not consider its activities in California to be sufficient to support a finding that it is a retailer engaged in business in this state. Virtually all membership fees are generated through direct mail sent from outside California. Its salespersons do not solicit any California firms or members in person. All solicitation is done by mail or telephone from outside California. The only solicitation for members is by credit card inserts, which are arranged by telephone or mail from Connecticut. The only limited connection with California is the location of the local telephone number and "node" for the computer shopping service and the fact that one vendor is located in California.

We do not consider the fact that [X] has a local telephone number connected to a node which is located in California to be sufficient to support a finding under Revenue and Taxation Code section 6203 that [X] maintains an office, place of distribution, sales or sample room or other place of business in this state. Nor does the fact that one of the vendors listed by [X] is located in California constitute sufficient involvement to support a finding of nexus.

We note that as to any orders which are delivered from a California vendor to a purchaser in California, Revenue and Taxation Code section 6007 will apply and tax will apply to such sales.

If you have further questions concerning this matter, we will be happy to discuss them with you.

MCA:mc

cc: Mr. Robert Nunes