



STATE BOARD OF EQUALIZATION

(916) 322-6083

July 6, 1977

Your letter dated June 21, 1977, which was addressed to Mr. Kenney, was referred to this office for reply. You state that you do not believe it necessary for your company to collect and pay over California use tax on sales to California residents.

We understand that you sell tangible personal property to California consumers by means of television advertisements on stations in California. The advertisements list an "800" telephone number to call or a box number at the television station. The telephone number listed is not a California number. Mail addressed to the television station is gathered by the station and forwarded to your New York office. The goods are shipped to California customers from out-of-state locations.

It is our opinion that the use of the television station box number is a sufficient connection with the state as to permit the state to require you to collect use tax from all your California customers, both telephone and mail order, and to file tax returns.

Section 6203 of the California Revenue and Taxation Code requires every retailer engaged in business in this State and making sales of tangible personal property for storage, use, or other consumption in this State to collect the use tax from the purchaser. "Retailer engaged in business in this State" includes any retailer having any representative, agent, salesman, canvasser or solicitor operating in this State under the authority of the retailer for the purpose of taking orders for tangible personal property for storage, use, or other consumption in this State. It is our view that by contracting with you to forward orders to your office, television stations become representatives or agents authorized by you to take orders for your goods. Your advertising implies to prospective customers that the television stations are your agents. We therefore, conclude that you are engaged in business in this State within the meaning of the law.

It is our opinion that the requirement for you to collect use tax from California customers is permitted under the Constitution of the United States. In Scripto, Inc. v Carson, 362 U.S. 207, the United States Supreme Court upheld the right of a state to require an out-of-state retailer to collect use tax where the retailer was represented in the state by independent commission agents. It is our opinion that the television stations with which you contract provide essentially the same type of service. In National Bellas Hess v. Illinois, 386 U.S. 753, the Supreme Court stated that the out-of-state retailer did "no more than communicate with customers by mail or common carrier as part of a general interstate business." In that case, the retailer "did not advertise its merchandise for sale in newspapers, on billboards, or by radio or television in Illinois. Orders were mailed to and accepted at its Missouri plant." Your situation is different. You are advertising by local television and not solely by mail or common carrier as part of a general interstate business. Indeed, the advertising is specifically aimed at the local market within the given television stations' viewing area. Orders are not mailed to your out-of-state location by customers. In Miller Brothers v. Maryland, 347 U.S. 340, the court also ruled in favor of the out-of-state retailer, but it did so on a finding that the retailer's advertising was not especially directed to Maryland. Your advertising is directed at California customers and is an effort to exploit the consumer market in California.

Section 6203 imposes the duty to collect use tax upon a particular class of sellers. Because you fall in this class, you are required to collect use tax on all your sales to California consumers, not merely on those sales which cause you to fall in that class.

We urge you to file the application for registration with the Board promptly, so that any interest or penalties may be minimized.

Very truly yours,

H. L. Cohen
Tax Counsel

HLC/vs