

**M e m o r a n d u m****220.0060**

To: San Diego – Tax Administrator

Sacramento  
October 16, 1957

From: Headquarters – Sales Tax Counsel (BH)

Subject: Engaged in Business in this State

Your letter of September 17

Your inquire whether an out-of-State retailer is a “retailer engaged in business in this State” by virtue of the fact that he has a truck driver making deliveries from his place of business across the line into California.

Under Section 6203 of the Sales and Use Tax Law as amended, a retailer is “engaged in business in this State” if he has “... any representative...operating in this State under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any tangible personal property”.

We must, of course, interpret the statutory working in the light of the decisions of the United States Supreme Court, principally the decision in the case of Miller Brothers Co. v. Maryland, 347 U.S. 340. The Court held this Delaware furniture retailer to not be required to collect Maryland use tax on sales to Maryland customers where the retailer made deliveries inot Maryland only occasionally. The facts stated are not complete, but it can be surmised that the retailer’s truck averaged about 20 deliveries or less a year into Maryland.

In the Miller Brothers case, the driver did not make collections and the retailer never had occasion to reposses any of the furniture sold to Maryland customers.

Due to the uncertainties, we would not at this time wish to press use tax collections against a retailer whose sole entrance into California was by a delivery truck, unless such deliveries were in substantial numbers. We suggest that an average of about two trips a week should be considered sufficient to require the retailer to collect use tax.

Where the driver makes collections some of the time, jurisdiction can probably be sustained if deliveries are regularly made into California. We suggest that when collections are made by the driver, an average of one trip every two weeks will require the retailer to collect use tax.

If the retailer is required to collect use tax, the tax must be collected on all sales to California customers, even where the customer picks up the goods in Yuma.

Bill Holden

BH:tl