STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
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916/ 445-2488

October 23, 1978

Mr. D---t C. A---
Attorney at Law
P.O. Box XXX
--- ---, Missouri XXXXX

Dear Mr. A---:

Your letter of August 24, 1978 to Mr. T. P. Putnam has been referred to the undersigned for reply. You have requested our opinion as to whether your client, X Corporation, would be required by California law to collect use tax from California purchasers under the following set of facts:

> "X Corporation is a corporation organized under the laws of the State of Missouri. X Corporation owns and operates several department stores in Missouri which specialize in high-priced luxury lines in furniture, clothing, kitchenware, dinnerware, and unique gift items. These department stores are named 'A' or 'B'. X Corporation owns no stock or other interest in any business connected with California.
>
> "X Corporation also conducts a direct mail order operation through its mail order catalogue entitled 'A-B.' The A-B Catalogue contains items for sale in the A or B department stores. Sales by X Corporation in California are solicited solely through the A-B catalogue which is mailed directly to California residents' homes by U.S. Mail or by interstate common carrier. Orders are placed with X Corporation by California residents by mailing completed order blanks and payments to its place of business in the State of Missouri. Deliveries of ordered goods are made to California residents by shipment through U.S. Mail or interstate common carrier. All advertising is through interstate media, involving no physical presence of an agent in this state.
>
> "X Corporation's sole shareholder, Parent Corporation, is also organized in the State of Missouri. Parent Corporation is a manufacturer and wholesaler of various paper products which are sold by a subsidiary of Parent Corporation (M---) to independently owned retail outlets. Parent Corporation's products are not sold through A-B Catalogue, and are dissimilar to the great bulk of items sold at X Corporation's A and B department stores in the State of Missouri.

> "M--- is doing business in California and markets only Parent Corporation's products. M--- has no operational or financial involvement or relationship with the activities of X Corporation, has completely different employees and officers and neither solicits sales for nor takes orders out of the A-B catalogue. M--- and X Corporation operate completely independently of each other and have completely dissimilar purposes and products.
>
> "Parent Corporation also has completely separate and different officers, employees, purposes, and budgets from those of X Corporation. X Corporation does not benefit from or use any of Parent Corporation's advertising, and X Corporation's name is dissimilar to the name of Parent Corporation, as are the names of the A and B department stores of X Corporation."

In your opinion, based on the above statement of facts, National Bellas Hess v. Dept. of Revenue of Illinois, 386 U.S. 753 (1967), clearly exempts A Corporation from any liability for collection of use tax from California residents imposed on sales made to them through the A-B catalogue.

It is also your opinion, based on the above statement of facts, that California law does not deem X Corporation to have sufficient nexus with California to justify imposing liability for collection of use tax on X Corporation. Section 6203 of the California Revenue and Taxation Code generally defines a "retailer engaged in business in this state" (for purposes of use tax collection liability) as one who directly or through a subsidiary or agent maintains physical presence in California. Neither Parent Corporation nor M--- is a subsidiary or agent of X Corporation. You feel that it is obvious from the above statement of facts that X Corporation has no agent, subsidiary, or any other presence in California other than through its mail order operations.

Revenue and Taxation Code section 6203 defines a "Retailer engaged in business in this state" as

> "(a) any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business.
>
> "(b) any retailer having any representative, agent, salesman, canvasser or solicitor 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."

Under the facts as you describe them, we are of the opinion that "X" would not be considered a "retailer engaged in business in this state" as provided in Section 6203 and accordingly is not responsible for the collection of California use tax with respect to the sales by "A-B" of tangible personal property which it ships by mail or common carrier to California purchasers.

If you have further questions concerning this matter, please write this office again.

Very truly yours,

Mary C. Armstrong
Legal Counsel

MCA:ba

3/16/89 X could be engaged in business in California within Section 6203(f), as enacted effective 1-1-88, depending on factual matters not stated in the above opinion.
D. J. Hennessy

4/24/97 Times change. Don's note above no longer applicable unless & until Congress permits it (see 6203(f) as reworded. DHL.