

M e m o r a n d u m**305.0032**

To: Mr. Donald Brady

Date: April 5, 1977

From: T. P. Putnam

Subject: Indians

This is in response to your memo of April 1.

You first ask whether a permitized California retailer operating outside a reservation is relieved of liability for sales tax if he takes a resale certificate in good faith from a non-permitized Indian retailer operating on the reservation who makes a taxable use of the property purchased.

The answer is that the permitized California retailer is not relieved from liability for the sales tax. Sections 6092 and 6242 of the law and paragraph (a) of Regulation 1668 do not provide relief from liability if the purchaser does not have a seller's permit. In accord with paragraph (a) of Regulation 1668 the permitized retailer is relieved of the burden of proving that the sale is not at retail. However, if it is known that there was a taxable use by the purchaser, the retailer is liable of the sales tax.

You also ask where the liability falls if the Indian retailer sells the property to a reservation Indian who picks it up at the place of business of the California retailer off the reservation. In that case the sale by the Indian retailer is not made on the reservation and the Indian retailer is liable for sales tax. The California retailer cannot be held liable under Section 6007 since the Indian retailer is engaged in business in this state. Section 6007 applies only where the retailer is not engaged in business in this state.

TPP:po

cc: Evaluation & Planning
Gary Jugum
John Murray
Glenn Rigby