

# Memorandum

325.0080

Sacramento  
March 31, 1955

To: Mr. V. M. Ekstrom

From: E. H. Stetson

Subject: --- --- ---  
--- --- ---

Account No. S-XXXX  
(now: SC --- XX-XXXXXX)

It appears from a review of the correspondence attached that this retailer is making sales of organs in interstate commerce and is not required to hold a seller's permit.

In our opinion, unless sales are made with the participation of a local office or place of business, the sales are made in interstate commerce and the use tax is the applicable tax.

It is noted, however, that in the file of E--- -. P---, S-XXXX, there is a letter dated June 2, 1952, from Mr. P--- on the letterhead of M. P. M---, Inc., on which there is printed: --- --- --- --- - -- --- ---, Manager. The letter also has San Francisco printed thereon. From this, it appears that the M--- Company may be maintaining a place of business in this State and thus required to collect the use tax. It is suggested that further investigation be made with regard to the relationship between P--- and the company. Apparently, some investigation has been made, but no definite conclusions appear to have been reached.

The case appears quite similar to that of C--- F--- Limited, S--- H---, Quebec, which sells organs to churches. Yesterday, there was heard before the Board a petition of --- S--- Episcopal Church, B--- H---. The seller contended through its attorneys that it had no place of business in California. The purchaser, however, through its attorney, claimed all negotiations were conducted with one ---A---, XXX East V--- Avenue, Burbank. The Board ordered the matter taken under consideration so that the staff could investigate the operations of A--- to determine whether his operations constituted maintaining a place of business in this State by the seller so that the seller could be held liable for collection of the use tax. It was the conclusion that the use tax rather than the sales tax applied.

It was the conclusion that the use tax rather than the sales tax applied but this would be subject to revision if it is found that the seller maintained an office or place of business in this State which participated in the sale

E. H. Stetson

EHS:djr