

M e m o r a n d u m**415.0180**

To: Out-of-State – District Administrator (ABG)

Date: May 18, 1967

From: Tax Counsel (EDM)

We regret our delay in replying to your memo of March 8, 1967 in which you ask our opinion on whether the University of Minnesota Press is a “retailer engaged in business in this state” under Section 6203 of the Sales and Use Tax Law, and as such required to register with this Board and collect use tax from its customers.

As you know, in order to be a retailer under Section 6015 of the law. The retailer must be a “person” as defined in Section 6005 of the law. It has been our long standing administrative position that a state other than California is not a person within the meaning of Sec. 6005.

Our research of the University of Minnesota Press disclosed that it is an agency of the State of Minnesota. In a federal case involving this particular organization, the court was asked to determine whether the defendant (University of Minnesota Press) was a corporation in violation of the Clayton Anti-Trust Law. While the court did not answer the question whether the Clayton Act was violated, it did hold that the defendant “Press” was not a corporate person, but rather an agent of the state. The court said on page 442:

“The ‘Regents of the University of Minnesota’ is a constitutional corporation created to carry out State purposes and the acts of the Regents are, therefore, the acts of the State of Minnesota. The University of Minnesota Press, being a creature of the Regents of the University of Minnesota is, therefore, an agency of the State of Minnesota and the acts of the Press are the acts of the State of Minnesota.” (107 F. Supp. 439.) (Emphasis added.)

Inasmuch as the University of Minnesota Press is an agent of the University of Minnesota and the latter an integral part of the State of Minnesota, it would appear that the University of Minnesota Press is not a “person” within the meaning of Section 6005 of the law and, therefore, could not be regarded as a retailer under Section 6015 of the Sales and Use Tax Law. Accordingly, we are of the opinion that the University of Minnesota Press is not a retailer engaged in business in this state under Section 6203 and, for that reason, cannot be required to register and collect use tax from its customers who purchase property for use in this state.

EDM:lt [1b]