

**M e m o r a n d u m****480.0120**

To: Out-of-State – Auditing

Date: April 19, 1967

From: Tax Counsel (RHO)

Subject: X-----

This is in reply to your memo of November 30, 1966 concerning objections raised by the taxpayer to our audit on the ground that certain California sales were made by its jobbers, selling for their own account, rather than by the taxpayer.

The facts applied indicate that taxpayer has entered into contracts with certain independent jobbers for the purpose of utilizing the jobbers' sales organizations for the sale of its products. The contracts provide in part:

1. That the jobber shall not use taxpayer's name except as authorized by taxpayer.
2. All sales solicited shall be in taxpayer's name and on order forms approved by taxpayer.
3. Taxpayer reserves the sole right to accept or decline orders and to accept returns or make other adjustments with customers.
4. All bills and invoices shall be by taxpayer and in its name. All invoices and accounts receivable are the property of taxpayer.
5. "Title to merchandise sold by the Company through the Jobber shall remain with the Company."
6. The jobber is to receive no money in payment of sales unless authorized by taxpayer. All money received by the jobber from customers in payment is the sole property of taxpayer and shall be turned over to it immediately.
7. Taxpayer will remit to the jobber the amounts due him.

It appears that the jobbers are authorized to use any of several names, all of which are controlled by taxpayer. The address for each billhead name is taxpayer's address. Our New York office has taken the position that all of the sales made by the jobbers are taxable to taxpayer

Taxpayer contends that only sales where billing was returned in its name should be attributed to it, as the other sales are the liability of its jobbers. In support of its contention that the jobbers sell in their own right and not as the agents of taxpayer, the taxpayer has submitted a number of documents relating to its federal income tax and the New York City sales tax. Taxpayer argues that the treatment accorded by the federal and New York tax authorities supports its position.

It appears that the contracts between taxpayer and its jobbers fully support the position taken by our New York office. While the jobbers may be independent firms, handling the products of other manufacturers, it seems clear that when they are soliciting orders for taxpayer, they are not selling on their own behalf. The contract provisions set out above amply support this conclusion. The taxpayer's arguments seem to be based primarily on the treatment accorded it by other taxing agencies rather than on the facts. While such treatment may be entitled to some weight in an appropriate case, it is of little persuasive value here. Accordingly, the sales made through the jobbers are properly taxable to taxpayer.

RHO:kc [lb]