

505.0608**Memorandum**

To: Mr. Dario J. Romano
Business Taxed Representative
Return Review Section

Date: April 1, 1994

From: David H. Levine
Supervising Staff Counsel

Telephone: (916) 445-5550

Subject: REDACTED TEXT

This is a follow up to the memorandum to you dated December 7, 1993 from Staff Counsel Gerald Morrow. Prior to getting to the main reason for this follow up, I wish to confirm your memorandum dated January 28, 1994. In Mr. Morrow's memorandum, he referred to the belief of REDACTED TEXT that it need not collect sales tax reimbursement from REDACTED TEXT. You correctly point out that this was reversed and should have referred to REDACTED TEXT's belief that it need not pay sales tax reimbursement to REDACTED TEXT. Thank you for calling this to our attention.

The primary reason for this memorandum relates to whether a person can, in fact, act as the agent of the United States or its instrumentalities. Mr. Morrow considered the claim that REDACTED TEXT acted as the agent of a United States instrumentality. He discussed the tax ramifications of REDACTED TEXT acting, or not acting, as the agent of the instrumentality. Mr. Morrow did not discuss whether REDACTED TEXT could, in fact, act as an agent of a United States instrumentality.

For us to accept that a person acts as an agent of the United States or its instrumentalities, that person must be regarded as an agent of the United States or its instrumentalities under federal law. In United States v. New Mexico (1982) 455 U.S. 720, 71 L.Ed.2d 580, the United States Supreme Court considered whether sales tax could be properly imposed on sales to contractors whose contracts with the United States had been amended to provide that the contractors acted as agents of the United States for certain purposes, including the disbursement of government funds for the acquisition of property. The Court identified the critical question as "whether the contractors can realistically be considered entities independent of the United States. If so, a tax on them cannot be viewed as a tax on the United States itself." (71 L.Ed.2d at 594.) The Court upheld the tax.

Thus, although Mr. Morrow discussed the implications of REDACTED TEXT acting as the agent of the United States instrumentality, there is some doubt as to whether a person such as REDACTED TEXT who is not itself an instrumentality of the United States can act as the agent of the United States or its instrumentalities.

DHL:cl

cc: San Francisco District Administrator