

M e m o r a n d u m**710.0007**

To: Joseph J. Cohen
AA – District Principal Auditor

Date: July 9, 1969

From: John L. Waid
Tax Counsel

Subject: S- -- XX-XXXXXX
Place of Sale under Section 7205 for “Boiler Room”
Sales of Newspapers

Pursuant to our telephone conversation of May 8, 1992, I have obtained from Larry Micheli, Supervisor, Local Tax Section, copies of your correspondence with D--- E. M---, Director of Taxes of the --- --- --- (“the paper”), on the above topic. Mr. M--- apparently still has questions regarding its use of so-called “boiler rooms” to solicit subscriptions.

Mr. M--- wrote you on October 3, 1991, requesting a written opinion on the local and district tax consequences of the various methods by which the paper sells subscriptions and papers. On October 23, 1991, you replied with your opinion. You discussed the paper’s use of “boiler rooms” as follows:

“Our answers, which we have confirmed verbally with our Headquarters Local Tax Unit is based on the understanding that [the paper] is engaged in business (i.e. by means of sales offices and/or vending machines) in the six major Southern California Counties. Your statement and our answers are as follows:

“HOME DELIVERY: Selling offices exist in many locations in the six major Southern California counties. Subscriptions are accepted at these offices in downtown [city 1]. Capability exists to track subscriptions by destination. Subject to your concurrence, we intend to report all house delivery subscriptions by Destination for both local and district sales tax purposes.’

“You are correct as regards district sales tax. For local sales tax, the tax must be allocated to the jurisdiction where the subscriptions are negotiated and accepted. For example, for subscriptions negotiated and accepted at an office in [city 2], the local tax must be allocated to that jurisdiction.”

You indicated in our telephone conversation that after he received your letter, Mr. M--- stated that the orders taken by these selling offices were accepted at the paper's head office.

OPINION

A. Local Tax – Place of Sale

Section 7205, as interpreted and implemented by Regulation 1802, provides that, for the purposes of the local tax, all retail sales take place at the retailer's place of business unless the property is delivered out of state. If a retailer has more than one place of business in this state which participates in the sale, the sale occurs at the place of business where the principal negotiations are carried on. If that is where the order is taken, it is immaterial that the order must be forwarded elsewhere for acceptance, credit approval, shipment of billing. (Reg 1802(a)(2)).

In our opinion, the term "principal negotiations" as used in the above regulation does not mean the final approval by the headquarters office to enter into the contract, nor does it refer to the authority of the headquarters office to finally negotiate the price offered or accepted. Rather, our opinion is that when the principal point of contact between the seller and its prospective customers is through the sales personnel located in or working out of a branch sales office, the place of sale for Bradley-Burns tax purposes is that sales office, notwithstanding that the headquarters office has final approval and price discount authority. In all but exceptional cases, a field sales office out of which salesmen work in contacting customers, making presentations, and soliciting orders for the work involved is the place of "principal negotiations."

B. Tax Consequences to [the paper]

"Boiler rooms" are typically spaces holding desks and telephones where salesmen call potential customers and attempt to make sales. Such places may be relatively permanent locations or may move frequently. The customer's contact is solely with the person making the call.

We thus concur with your letter to Mr. M---. The only negotiations between the paper and the customer occur during the phone call placed from the boiler room. The customer has no contact with the head office. As noted above, the fact that the order must be accepted occurred in the field office. In this case, the local tax revenues from the sale are allocated to the location of the boiler room.

In our conversation, you brought up the question of subscription renewals. As we noted, a subscription is largely a one-way contract. While the publisher is bound to deliver its papers at a set price during the life of the subscription, the customer can walk away at any time, and is under no obligation to renew at a new price. Thus, we agree that a subscription renewal is a new contract the local tax revenues from which should be allocated to the location, presumably the head office, from which the renewal notice was sent.

In reviewing your letter, I note that you and Mr. M--- discussed the tax consequences of sales of current or back issues of the paper at the front desk in the lobby in the downtown [city 1] office. Mr. M--- indicated that such sales may be made in person or through the mail. You concurred with his assessment that local tax is reported at the place of destination. While we agree with you regarding local tax, Mr. M--- may have received a wrong impression regarding district taxes. The place of sale for the over-the-counter sales is the downtown office for both local and district taxes, making them subject to the transactions taxes or the two [name] County taxing districts. Only the mail order sales are exempt from those transactions taxes and are subject to district use tax at the point of destination.

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cc: Larry Micheli, Supervisor, Local Tax