

M e m o r a n d u m**710.0013.600**

To : Mr. Robert Wils, Supervisor
Allocation Group (MIC:39)

Date: December 30, 1997

From : John L. Waid
Senior Tax Counsel

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Subject: [No Permit Number]
I--- S--- for R---, Inc.
City of ---

I am answering your memorandum to me dated November 12, 1997. Attached to it was a copy of a letter to you dated November 4, 1997, from Mr. J--- T. A---, of --- --- --- [A---], in which he requested advice as to the proper allocation of local sales tax to be derived from sales made by I--- S--- for R---, Inc. [I---]. According to Mr. A---, proposes to establish a sales, warehouse, and distribution center in the City of ---. Customers will place orders through the Internet and a phone bank for delivery of products in the San Francisco Bay area. The letter also indicates that this complex will, for now, be [I---]'s only location in California. Although the letter does not say so, we assume for the purpose of this discussion that both the phone bank and the employees who will receive the orders placed through the web site -- they may very well be the same people -- will be located in ---. Mr. A--- also indicates that his primary concern is the orders taken through the web site, given the recent attention devoted to taxation of transactions made over the Internet.

OPINION

Because the products are located in this state at the time the act constituting the sale takes place (shipment), these transactions are subject to state and local sales tax. (§§ 6010.5 & 6017.) As you know, when a retailer has only one place of business in California, the place of sale for sales tax purposes for all of the retailer's sales in California is that location. (§ 7205; Reg. 1802(a)(1) & (c).) [I---] will apparently not operate a retail store; the customers will transmit their orders to [I---] from remote locations. Where a customer places his order through a phone bank, the location of the phone bank is the place of sale for local sales tax purposes. (Annot. 710.0007 (5/19/92).)

The rationale for this result is that section 7205 and Regulation 1699(a) require the Board to determine where persons customarily visit the retailer's employees for the purpose of making sales. As a result, the place of sale is not the location of the switching equipment but that of the employee who actually answers the phone.

The same reasoning would apply to orders placed through a web site. As we understand it, a web site is essentially an electronic forwarding agent from which orders are sent on to the retailer. Under Regulation 1699(a), then, the place of sale for local sales tax purposes for orders placed over the Internet would be the jurisdiction where the employee who receives the order is located. We thus agree with [A] that, in this case, and based on the above assumptions, the place of sale for all of these transactions would be the City of ---.

The considerations which mitigate against a web site providing the sort of presence under section 6203(b) which requires an out-of-state retailer to collect use tax (See, Reg. 1684(a), as amended eff. 11/27/98) are not present in sales tax transactions. The retailer is already located in California as are the goods and the customers. This state already has jurisdiction over [I---] so as to require it to pay sales tax. The location of the web server is immaterial.

JLW:sr

cc: Mr. Larry Micheli (MIC:27)
Ms. Sharon Jarvis