

M e m o r a n d u m**135.0160**

To: Out-of-State – Compliance (TFJ)

Date: November 17, 1966

From: Tax Counsel (RHO) - Headquarters

Subject: C--- C--- C---
XXX --- --- ---
---, IL XXXXX

S- -- XX XXXXXX

This is in reply to your memorandum of November 15, 1966, requesting our assistance in persuading the C--- C--- C--- that it must register under the California Sales and Use Tax Law. We take the liberty of writing to you rather than to the taxpayer because we have concluded that no tax is applicable under the facts presented.

It appears from the file that C--- has made sales of stationery and supplies to its California agents. On the theory that C--- is making sales of tangible personal property, we have taken the position that it must collect use tax on these items. Mr. A---, C---'s Chief Counsel, has taken the position that C--- is not required to register with the board on the ground that the firm does not qualify as a retailer engaged in business in this state. You have asked that we write to Mr. A--- in an effort to persuade him that such registration is required.

Under the facts presented, we believe that under the provisions of the California Constitution, article XIII, § 14-4/5, which provides for the taxation of insurance companies, C---'s agents are not subject to California use tax for the materials sent to them. Article XIII, § 14-4/5 imposes an annual tax upon each insurer doing business in this state. The tax imposed is in lieu of all other taxes and licenses, state, county, and municipal, with certain exceptions not applicable here. Interpreting this provision, the California Supreme Court has held that a tax which would be invalid if imposed upon an insurance company may not be imposed on the company's agent. Groves v. City of Los Angeles, 40 Cal. 2d 751 [256 P.2d 309].

From the facts presented, it appears that the use tax in question would be imposed upon C---'s agents for their use of the materials in the conduct of their insurance businesses. It would clearly be invalid if asserted against C---. We conclude, therefore, that it may not be imposed upon C---'s agents and, for that reason, C--- need not collect the use tax nor register with this board.

The term “agent” used herein refers to a person authorized by and on behalf of an insurer to transact insurance as distinguished, for instance, from a person acting in the capacity of a broker who on behalf of another person transacts insurance with, but not on behalf of, an insurer. C--- would, of course, be required to register with this board if it were making sales in this state to persons other than its agents or were making sales to its agents of tangible personal property not connected with the insurance business.

RHO:md