STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

August 10, 1964

REDACTED TEXT

We have reviewed the statement of facts and memorandum of law submitted with your petition for redetermination under the Sales and Use Tax Law, dated June 24, 1964.

We realize, as you point out in your memo, that the precise point at issue may not have been decided in any court decision, but it seems to us that in the absence of a decision upholding your position we are bound by the provisions of Section 6203 of the Sales and Use Tax Law. There is no question but what REDACTED TEXT is a retailer engaged in business in this state as defined in that section. The same section requires every retailer engaged in business in this state to collect the use tax from the purchaser when the tax is applicable.

The retailer is the corporate entity. Any sales made by that legal entity even though an independently operated division of the corporation must, in our opinion, be considered sales made by the corporation. Therefore, if the corporation is engaged in business in this state, it is mandatory that the corporation collect the use tax. We have consistently followed the separate entity theory even when, as is often the case, this results in the absence of a tax liability that would arise were we to disregard the corporate entity.

By the same token, we have not recognized divisions of the same corporation as separate legal entities. Whether the United States Supreme Court would have held differently in Scripto, Inc. v. Carson, 362 U.S. 207, had its division not been represented by independent contractors is speculative, and to assume that the court would have drawn a distinction between representatives of the Adgif Division and representatives of Scripto, Inc., is to make, what we believe to be, an unwarranted assumption. It seems to us that representatives of a division of a corporation are representatives of the corporation.

You also refer to Nelson v. Sears, Roebuck & Co., 312 U.S. 359, pointing out, however, that the facts are different in that Sears maintained retail stores in Iowa in which intrastate sales were made, and that the sales that were made in the Iowa stores were identical in nature with the sales made through the mail. You state, "In effect, this was one business involving mail order sales and store sales."

We doubt if it is any the less one business insofar as liability to collect use tax is concerned if a portion of its business is carried on through a separate division, but not by a separate legal entity. The following language of the Supreme Court in the Sears case seems to us to indicate that the court would not be concerned with such a distinction, nor with the fact that the type of merchandise sold through the mail order portion of the business differs from the type sold in the remaining portion of the business.

> "Whatever may be the inspiration for these mail orders, however they may be filled, Iowa may rightly assume that they are not unrelated to respondent's course of business in Iowa. They are nonetheless a part of that business though none of respondent's agents in Iowa actually solicited or placed them. Hence to include them in the global amount of benefits which respondent is receiving from Iowa business is to conform to business facts."

The question being one of jurisdiction to require an out-of-state retailer to collect the use tax, it seems to us that once that jurisdiction is established the indications in the decisions are that the requirement extends to all sales to consumers made by the corporation over which jurisdiction has been established.

You have requested a hearing before this Board in Sacramento. On the assumption that you will still desire such a hearing, we shall arrange to place it on the Board's calendar in the near future giving you at least three weeks notice of the date. You may, of course, file a reply to this letter if you desire to do so.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:fb [lb]