



STATE BOARD OF EQUALIZATION

August 29, 1958

Attention: ---
Exec. Vice President

Gentlemen:

To restate the facts, you have a representative in California who solicits orders for tangible personal property on your behalf strictly on a commission basis. The question is whether you are "engaged in business" in California as defined under Section 6203(b) of the California Sales and Use Tax Law so as to require you to collect the use tax from your California customers.

The first question is whether or not your representative is operating in this State under your authority as required by Section 6203(b). The term "authority" as no settled legal meaning and hence depends upon the purposes and objectives of the statute. You will note that "authority" is defined in Ballentine's Law Dictionary on page 128 as "delegated power." The purpose in amending Section 6203 was to require all out-of-state retailers having any representatives here for the purpose of selling tangible personal property to collect the use tax from their California customers. To limit the definition of "authority" to a situation where the out-of-state retailer supervises and controls the details of the work of his representative would serve to defeat the purpose of the amendment. Therefore, we take the position that the use of the phrase "under the authority of" in Section 6203(b) refers to any relationship between an out-of-state retailer and a California representative where the former delegates to the latter any power whatsoever to act on behalf of the former. In your case, your representative is at least empowered, given the authority, to act on your behalf in contacting customers for your product and to receive orders on your behalf. Not just anyone can undertake to solicit your product. He must receive some franchise, power, or authority from you to do so.

The next problem is whether your being required to collect the use tax violates the "due process" clause of the 14th Amendment.

It is stated in International Shoe Company v. Washington, 326 US 310, 90 L ed 95 at P 104:

"Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure."

In the next paragraph of the same page the opinion of the court made a statement to the effect that to the extent that a corporation exercises the privilege of conducting activities within a state and enjoys the benefits and protection of the laws of that state, it must prepare to undertake corresponding obligations.

You enjoy the benefits of the protection of the laws of California to the extent that you have a representative here under contract to solicit your products on your behalf in this State and to contact California residents on your behalf. The nature of your activity in California is such that it is within the "fair and orderly administration" of our laws to require you to collect the use tax from your California customers arising from your sales thereto and pay the same to the State.

Therefore, to make an out-of-state seller a tax collector under these circumstances does not violate his rights under the "due process clause" of the 14th Amendment. General Trading v. State Tax Commission, 322 US 335.

In the case of Miller Bros. v. Maryland, 347 US 340 98 L ed 744, the petitioner has no representative operating in Maryland and only made sales to Maryland inhabitants at its store in Delaware. Its only real contact with Maryland was an occasional delivery by its truck across the Maryland border.

In your case, you do have a representative regularly operating in California for the purpose of taking orders and making sales of tangible personal property.

Therefore, we are of the opinion that you are "engaged in business in this State" as defined in Section 6203 of the Revenue and Taxation Code and that you must collect the California use tax on sales of tangible personal property to purchasers for storage, use, or other consumption in this State; and we shall administer the law accordingly.

Very truly yours,

Stanley G. Lerner
Assistant Counsel

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cc: New York