

**M e m o r a n d u m****220.0100**

To: Out of State – Compliance – Sacramento (DLF)

November 30, 1964

From: Tax Counsel (GAT) - Headquarters  
LegalSubject: H--- R--- L---, Inc.  
XXX XX<sup>th</sup> Street  
--- ---, Iowa

We have reviewed the copies of franchise agreements which you have submitted concerning the operations of HRLI.

The agreements provide for the appointment of individuals to act as representatives of HRLI in this state for the purpose of soliciting orders in specified territories for the sale of magazines and encyclopedias furnished by HRLI. Under the agreements, all installment combination sales of magazines and encyclopedias must be accepted and approved by HRLI. After acceptance by HRLI the encyclopedias and magazines are drop shipped to the customer.

The agreements do not specify whether title to the magazines or encyclopedias pass to the dealer prior to shipment, after shipment, or at all.

Under the agreements, the dealer is authorized to retain 40 per cent of the amount of installment payments which he collects and he is required to remit the remaining 60 per cent to HRLI. The dealer is designated under the agreement to be an independent contractor.

On the basis of the foregoing, it is our opinion that the franchise dealers are representatives, agents, or solicitors operating in this state under the authority of HRLI for the purpose of selling or taking orders for encyclopedias. It is, therefore, our opinion that HRLI is a “retailer engaged in business in this State” within the meaning of § 6203, and is required to register and collect the use tax, which applies with respect to the encyclopedias and yearbooks sold to customers in California.

Our conclusion is not altered by the fact that the “franchise dealers” are designated in the agreement as “independent contractors.” To paraphrase the Supreme Court’s language in Scripto

v. Carson, 362 U.S. 207, the contractual tagging of the salesman as “independent”, neither results in the changing of his local function of solicitation nor bears upon HRLI’s effectiveness in securing a substantial flow of goods into this state.

GAT:mm  
Enc.