

M e m o r a n d u m**220.0221**

To: Mr. Robert Nunes

December 2, 1985

From: Legal (John Abbott)

Subject: W--- H--- – H--- C--- Library (No account number)
Engaged in business – mail order catalog sales

In your September 27, 1985 memorandum to the legal staff, you attached a copy of a news article from the September 27, 1985 Sacramento Bee, regarding a new marketing approach for mail order sales. Assuming the details provided in the article are accurate, you asked whether this represents sufficient nexus to hold the mail order firms responsible for collection of use tax.

In summary, the Sacramento Bee article describes the operations of a new firm, the H--- C--- Library, organized by W--- H---. Mr. H--- proposes to install mail order catalog centers in public libraries. The catalog center will enable a person using the catalog center to make a selection from a catalog in a binder, and then fill out a universal mail order form and deposit it at the center. Mr. H--- then processes the mail order form and receives a 10% commission on the amount of the order from the mail order firm. In turn, the library will receive 5% of Mr. H---'s gross receipts for providing space for the catalog centers.

In our opinion, each of the mail order retailers whose catalogs are displayed in the catalog center would be a retailer engaged in business in this state within the meaning of Revenue and Taxation Code Section 6203(b). The H--- C--- Library would constitute a representative or agent of the retailer for the purpose of selling and taking of orders for tangible personal property. Thus, the mail order firms would be responsible for collecting the use tax from California customers on all of their retail sales of tangible property delivered to California residents, regardless of whether the order was generated through the H--- C--- Library or otherwise. We think it is clear that Mr. H--- is operating as an agent or representative of the mail order firms because he processes the orders from customers, apparently by collecting the order forms and forwarding them to the appropriate mail order retailer, and because he receives a commission on each order received.

JA:hb