



STATE BOARD OF EQUALIZATION

September 2, 1969

Law Offices of
C---, B--- and C---
XXX --- Building
---, California XXXXX

Attention: Mr. J--- D. C---

Dear Mr. C---:

Thank you for the numerous case citations contained in your letter of August 18, 1969.

It is my understanding that it is your position that we cannot constitutionally require your client who is leasing tangible personal property located in California, to collect the use tax from such lessees and remit it to the state, when the lease was entered into in the State of Washington. You do not, however, contend that we may not constitutionally collect the tax from the lessee.

I have reviewed the cases you cited with great interest, but I am unable to agree with your conclusion.

As you are aware, Section 6203 of the California Sales and Use Tax Law requires every retailer engaged in business in this state to collect the use tax. Paragraph (c) of this section provides a person is engaged in business in this state when he derives rentals from a lease within this state.

To my knowledge, I am not aware of any case directly passing on the constitutionality of this statute or one of similar import. However, there have been several cases passing on the requirement of an out-of-state retailer to collect the use tax of another state. A few of these cases are Miller Pros. Co. v. Maryland, 347 U.S. 340, Scripto v. Carson, 362 U.S. 207, Nelson v. Montgomery Ward, 312 U.S. 373, Nelson v. Sears & Roebuck & Co., 312 U.S. 359, People v. West Publishing Co., 35 Cal.2d 80 [216 P.2d 441], and National Bellas Hess v. Dept. of Revenue, 386 U.S. 753.

It is interesting to note that in the Scripto case, Scripto was required to collect use tax notwithstanding the fact that its sales were exclusively in interstate commerce.

While recognizing that Scripto had independent contractors soliciting business from within the State of Florida, it is still our opinion that the mere presence of the leased property in this state is sufficient nexus for us to require that the lessor collect the tax. One must remember that the lease is a continuing sale and purchase so long as it is in this state (§§ 6006.3 and 6010.3).

Summarily, it is our conclusion that your client is required by Section 6203(c) to collect the use tax from your lessee and remit it directly to the state. As Section 6204 points out, said amount is debt owed to the state until it is paid

Very truly yours,

Glenn L. Rigby
Tax Counsel

GLR:lt

Bc: --- – Auditing (JDD)
--- – Compliance (DF)