

M e m o r a n d u m**325.0167**

To: San Jose - Auditing

March 10, 1975

From: Headquarters – Legal Counsel (HLC)

Subject: G--- M--- R--- Company
XXXX S. Xth Street
---, CA XXXXX

This is in reply to your memorandum dated January 23, 1975, and addressed to Mr. D. J. Hennessy concerning tax due on transactions between subject taxpayer and his out-of-state vendors.

We understand that taxpayer is a roofing contractor purchasing material from out-of-state vendors. He sends purchase orders directly to the vendors at the vendor's out-of-state addresses, and the vendors ship the ordered materials directly to taxpayer from the out-of-state location via common carrier. Typically, vendors do not have California branches, offices, outlets or representatives who participate in the sales, and typically the sales acknowledgements provide that title to the goods shall pass to taxpayer upon the carrier's delivery. Taxpayer has paid no tax on his out-of-state purchases and contends that he is not liable for use tax because the transaction is subject to sales tax since title passes in California.

It is our opinion that taxpayer is liable for use tax on materials that he purchases from out-of-state vendors and that he stores, uses, or otherwise consumes in this state.

It has been our position that the place at which title passes is not necessarily determinative as to the application of sales or use tax. Sales and Use Tax Regulation 1620(a)(2)(B) states that sales tax does not apply when an order is sent by the purchaser directly to a retailer at a point outside this state and the property is shipped, pursuant to the contract of sale, from a point outside this state directly to the purchaser in this state. Thus contrary to taxpayer's contention, no sales tax is due on transactions of the type in which he participates. Section 6201 of the Revenue and Taxation Code imposes a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer. Section 6202 provides that every person using or otherwise consuming in this state tangible personal property purchased from a retailer is liable for payment of the use tax. Section 6401 provides that no use tax is due on transactions subject to sales tax. Since no sales tax is due on taxpayer's transaction, use tax applies, and taxpayer is liable for the tax.

HLC:bs