

**M e m o r a n d u m****325.0570.280**

To: Mr. James E. Mahler

Date: April 30, 1987

From: Gary J. Jugum

Subject:

On April 17, 1987, I did discuss with Messrs. Hennessy and Sorensen the question of the interpretation of Revenue and Taxation Code section 6203. I hadn't planned to discuss the matter at that time since Mr. Burkett was not available, but we proceeded anyway.

Where tangible personal property is delivered by a California retailer to a purchaser at a point of physical delivery outside this state and the purchaser is not known to be a California resident, I am reluctant to apply section 6203 literally in view of the due process observations of the court in *Montgomery Ward v. State Board of Equalization*, 272 Cal. App. 2d 728. Section 6247 does provide an aggressive double presumption in the circumstance where property is delivered outside this state to a known resident of this state. Section 6247 does provide a means for the retailer to protect himself from the presumption, and when section 6247 is read with section 6421, the seller is protected from the hard facts as well as the presumption. Section 6247 contemplates use of the certificate in the case of a known resident only. I am reluctant to see the seller in a worse position where the property is delivered to a non-resident. Where the delivery is to someone other than a known a resident, the seller is without an express statutory means of protecting himself from the collection obligation. Section 6421 does not literally cover the case where the basis for exemption is use outside this state.

While the matter is not free from doubt, we believe it appropriate to apply the concept of the court in *Montgomery Ward*, that there are circumstances where the seller can disconnect himself from the use tax collection obligation by delivering the property outside this state. A more serious question may be whether we can utilize section 6247 at all after *Montgomery Ward*; that is, whether we can utilize that section where there is a physical delivery outside this state to a known California resident. We have previously concluded, after the *Montgomery Ward* decision was handed down, that we would nevertheless rely on section 6247. in the case at hand, the facts are weaker for our side in one sense than in *Montgomery Ward*, since that case also concerned deliveries to known California residents.

GJJ:sr

cc: Mr. W. E. Burkett, Mr. E. L. Sorensen, Jr.  
Mr. Donald J. Hennessy