

M e m o r a n d u m**480.0040**

To: Out-of-State Auditing

November 19, 1965

From: Tax Counsel (GAT)

It is my understanding that "F" is an out-of-state agency which sells correspondence school courses.

The courses are advertised in publications distributed in this state. Interested students write to "F" for information regarding the courses. "F" notifies a representative in this state who makes personal contact with the student. The representative, an independent contractor, writes up a contract and sends it to "F" for acceptance. When the contract is accepted, the correspondence course materials are sent to the student. The student utilizes the materials in performing course lessons, which he sends to "F" for criticism and grading.

It is my understanding that Mr. "N", a representative of "F", has taken the position that "F" is not selling the lesson materials to students, inasmuch as its charges for the the lesson materials are insignificant in relation to its charges for the courses. He contends that "F" is a service enterprise as that term is used in Ruling 1 [now Reg. 1501], and is the consumer of the lesson materials. He contends that "F" is not a retailer engaged in business in this state making sales of tangible personal property for use in this state; therefore, it is not required to collect the use tax from its students in this state.

Ruling 1 provides that persons engaged in the business of rendering service are consumers, not retailers, of tangible personal property which they used incidentally in rendering the service. The ruling further provides that if in addition to rendering service they regularly sell tangible personal property to consumers, they are retailers with respect to such sales.

Although it could be said that "F" is engaged in the business of rendering a service and is the consumer of tangible personal property which it uses incidentally in rendering the service, it is my opinion that the books and lesson materials in question are used by its students; accordingly, the first sentence of Ruling 1 is inapplicable.

It is further my opinion that, in addition to rendering the service of grading and criticizing students' lessons, "F" regularly sells the books and lesson materials to the students who consume them. Accordingly, "F" is a retailer and is required to register and collect and report tax, as indicated in the second sentence of Ruling 1.

As further indicated in annotation 1463.00 [now 295.0140], Cal. Tax Service, it has been the position of this Board that tax applies with respect to books and lesson materials furnished to students in connection with a correspondence course, and if the price of books and materials is not separately stated, the tax applies to their fair retail selling price.

In view of the foregoing, it appears that "F" is engaged in business in this state, is selling books and lesson materials to its students in this state, and is liable for the collection of the use tax measured by the fair retail selling price thereof.

GAT:fb [1b]