

**STATE BOARD OF EQUALIZATION**

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January 18, 1995

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Mr. A--- R---, CPA, MS
Accounting and Tax Planning
XXX --- --- South, Suite X-
--- ---, --- XXXXX

Re: G---'s Card Gallery

Dear Mr. R---:

This is in reply to your November 16, 1994 letter regarding the application of California sales and use tax to charges by G---'s C--- G--- (GCG). GCG is an advertising firm which offers alternative advertising for various clients by placing the clients' postcards strategically in Los Angeles restaurants and night spots.

"BACKGROUND

GCG solicits various companies that wish to advertise in the Los Angeles area. The owners of GCG have had extensive advertising experience and have connections in the industry. Typical companies that would advertise with GCG are, A--- V---, J--- J---, etc.

"OPERATIONS

The basic service that GCG delivers is the presentation of their client's advertising in the form of postcards not to be used for resale purposes in various Los Angeles restaurants. GCG has approached approximately 90 restaurants and asked them if they would be willing to have a postcard rack (photo enclosed) placed in their location. If the restaurant agrees, a rack is installed by GCG. In return, the restaurant gets their own postcard printed free of charge to be placed in one slot in their rack. GCG will design the restaurant's postcard.

"Each rack can hold 24 postcards, thus with the restaurant taking 1 for themselves, there are 23 remaining for GCG to fill with their client's postcards."

"ADVERTISING SERVICE DELIVERED

The benefit to the Client is that they receive repeated exposure in 90 locations in Los Angeles for patron's waiting to be seated, at the bar, or on their way out. Postcards are free of charge to patrons. The postcards are not to be sold but simply used to further enhance their client's message and image. In effect, title to postcards remains with the client/advertiser.

"Each client is guaranteed 1 slot in all 90 restaurants.

"PRINTING & MONTHLY SERVICING

GCG is usually not responsible for designing postcards as most clients already have their own logos. GCG has these logos printed into finished postcards by an outside vendor (out of state). Finished cards are then shipped from the printer to GCG. GCG then places them and refills racks during the month in their 90 restaurants.

"SALES & BILLING

Clients are billed monthly for the aforementioned advertising."

Since you state no facts indicating that GCG sells the postcards to its clients, we assume that, where you state that "title to postcards remains with the client/advertiser," you mean that title remains with GCG.

You conclude that, under the transactions, GCG provides advertising services to its clients, and sales tax does not apply to GCG's charges to its customers for placing the postcards in the California locations. We agree with your conclusion provided our assumption is correct that there are no facts showing GCG sells the postcards to its clients. If our assumption is correct, GCG provides an advertising service to its clients and places its own postcards in the restaurants for the restaurant patrons to take free of charge.

Revenue and Taxation Code section 6201 imposes a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. The law defines "use" to be any exercise of any right or power over tangible personal property incident to the ownership of the property except for the sale of the property in the regular course of business.

When GCG places its postcards in a restaurant in California for persons to take for no charge, GCG thereby makes a "use" of the postcards in this state. Also, when GCG places racks in restaurants to hold those postcards, GCG makes a use of the racks in this state. Accordingly, when GCG purchases postcards and racks from an out-of-state retailer for use in this state and

Mr. A--- R---, CPA

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uses the tangible personal property in this state, GCG is responsible for reporting and paying use tax on the use of that property measured by the sales price of the property to GCG.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

cc: --- --- District Administrator - --