

**STATE BOARD OF EQUALIZATION**

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May 25, 1994

BURTON W. OLIVER
Executive Director

REDACTED TEXT

Re: REDACTED TEXT

Dear REDACTED TEXT ,

This is in response to your letter dated April 5, 1994. You state that your company manufactures pressure sensitive labels containing user instructions which will be affixed to pay telephones. You ask whether sales of the labels are taxable.

We assume that the purchaser of the label owns the phone to which the label is attached. Your letter does not state whether the person who purchases the labels will affix them to telephones that he will use or to telephones that he will resell.

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property in California. All gross receipts from sales of tangible personal property are presumed subject to tax until the contrary is established. (Rev. & Tax. Code § 6091.) The exemption which may apply in your case is set out in Regulation 1589 which provides:

“Tax does not apply to sales of labels or nameplates if:

“(A) The purchaser affixes them to property to be sold and sells them along with and as part of such property, as, for example, sales of name-plates of manufacturers or producers which are permanently affixed to each unit of products sold, such as automobiles and machinery.” (Reg. 1589(b) (2) (A), (emphasis added).)

Thus, the exemption requires that the labels be purchased by a person who will affix them to property which that person will resell and the labels will be resold as part of the property to which they are affixed. Labels within the meaning of this provision include those which are attached to containers to identify the product or the producer, describe the contents or instruct the consumer on the application or use of the product. That is, the essential function of a label within the meaning of Regulation 1589 is to convey information concerning the product. (Business Taxes Law Guide Annotation 195.1935 (4/26/71).) On the other hand, tax applies to sales of

non-labels such as price tags, shipping tags, and advertising matter used in connection with the sale of property. (Reg. 1589(c) (1).)

Based on the facts, the labels about which you inquire will be affixed to telephones to provide user instructions. These labels will convey product information. If these labels are attached by your customer to telephones that your customer will resell then your sale of the labels is exempt from sales tax. If these labels are attached by your customer to telephones that your customer uses, then the sale of the labels is subject to tax as explained in the regulation.

We note, however, that you should obtain an exemption certificate from the purchaser of these labels if the labels will be affixed to telephones which will be resold. This is because your sales are presumed taxable until you establish the sales tax exemption. Exemption certificates are valid only if complete, timely, and taken in good faith. They should not be accepted for labels containing price, shipping, or advertising information, since sales of these non-labels are not exempt. Regulation 1667, which explains what information must be contained in an exemption certificate and when it must be issued, is enclosed.

If you have further questions, feel free to write again.

Sincerely,

Pat Hildebrand
Staff Counsel

PH:cl

cc: Sacramento District Administrator