



STATE BOARD OF EQUALIZATION

July 15, 1977

Dear Mr. ---:

Your letter of June 1, 1977 to Mr. H. W. Nyland, Senior Tax Representative, has been referred to this office for reply. Your inquiry concerned whether or not your company is required to register with the California State Board of Equalization and collect and remit use tax as a result of purchases made by California consumers.

You state that "A" is a registered trade name of "B", Inc.; that "B", Inc. does not have any employees in California, nor does it "receive orders or perform processing and delivery services in California. Your company does, however, distribute preaddressed "mailers" in newspapers with a circulation in California. The orders from California customers are received and processed at the company's plant in Pennsylvania. You maintain a post office box in San Jose, California. You describe your California address as "merely a forwarding address." When the orders have been processed they are returned to the California customers through the U.S. Mail.

It is the position of your company that, in view of the above, "B", Inc. should not be required to obtain a California Sales Tax Registration Certificate.

For the following reasons it is the opinion of this office that "B" is in fact required to register, collect and remit the applicable tax due under the California Sales and Use Tax Law.

California Sales and Use Tax Section 6203 requires that "any retailer engaged in business in this state and making sales of tangible personal property for storage, use or other consumption in this state shall at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser."

A retailer engaged in business in this state has been expressly defined by Section 6203(b) to include:

"Any retailer having any representatives, agent, salesman, canvasser or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any tangible personal property."

Implied in the summary of activities you perform in California is the fact that your company utilizes some sort of representative in California for the purpose of gathering the "mailers" at the post office and forwarding them to your Pennsylvania headquarters. It is the long-standing position of the Board that when a company, such as yours, distributes mailers in California circulated newspapers and utilizes a California post office box for purposes of forwarding orders of its California customers that the requirements of Section 6203(b) are met.

I am enclosing, for your reference, a copy of an unpublished California Appellate opinion (Spokane Film, Inc. v. State Board of Equalization, (1974) 1 Civil 32899) in which the court held that an out-of-state photoprocessing company, distributing mailers in California and utilizing California post office boxes, was required to collect use tax due on purchases made by its California customers and remit the same to the Board.

Accordingly, your company is required to register under the California Sales and Use Tax Law for a Certificate of Registration – Use Tax and collect and report the tax due from your California customers. The fact that the actual processing of the orders is done in Pennsylvania and the orders are returned to California customers through the United States Mail does not serve to limit your responsibility in this regard.

Very truly yours,

Mary C. Armstrong
Legal Counsel

MCA:jw

Enclosure

bc: Out-of-State – Compliance
(A. B. Garceau, Jr.)