



STATE BOARD OF EQUALIZATION

July 7, 1993

This is in reply to your April 30, 1993 letter regarding the application of sales and use tax to charges involved with --- --- --- publication and distribution of three publications. You provided the following description and questions regarding the publications. Our responses follow each of your questions:

"A. Mail Marketplace I

This is printed by our company. All are delivered by direct mail through the post office each Wednesday to 20,700 households for free. Advertisers of all types display their ads and place classified ads. There are also inserts (advertisements) for stores like --- that they ship to us and we place them inside this publication. There is some editorial content. My understanding is that editorial content must be over 10% to be a newspaper or periodical. A large portion of content are in-house ads promoting our other newspapers --- --- ---, contests, paper courier jobs and special sections in the future.

1. Is this above paragraph description considered editorial?"

Preliminarily, we do not believe that Mail Marketplace I qualifies as a "newspaper" as defined at Sales and Use Tax Regulation 1590, Newspapers and Periodicals, at subdivision (a) (1). The publication does not contain news of a general character and of a general interest; that is, it does not appear to disseminate coverage of world or local events, sports, weather, etc.

In order for the publication to qualify as a "periodical" for purposes of Revenue and Taxation Code section 6362.7, the publication must appear at stated intervals at least four times per year, but not more than 60 times per year, and each issue must contain news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them. Each issue must be sufficiently similar in style and format to make it evident that it is one of a series. The term "periodical" does not include printed sales messages, shopping guides, or other publications of which the advertising portion, including product publicity, exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period. After reviewing the copy of Mail Marketplace you sent, we note that it contains articles of general interest on health and nutrition, services for senior citizens, household help, and a puzzle. However, even without counting any advertising inserts, we calculate the advertising portion to exceed 90 percent of the printed area of the entire issue. If that is true as to more than one-half of the issues during any

12-month period, the publication does not qualify as a periodical. We believe that advertising inserts and your in-house ads promoting your other newspapers are includible in the advertising portion of the calculation.

"2. If it is not considered a newspaper, periodical or printed sales message, then is there a use tax on newsprint used (Newsprint is paper we buy from papermills --- resale)?"

Revenue and Taxation Code section 6379.5 provides an exemption from sales and use tax for the sale and use of catalogs, letters, circulars, brochures, and pamphlets consisting substantially of printed sales messages for goods and services printed to the special order of the purchaser and mailed or delivered by the seller, the seller's agent, or a mailing house, acting as the agent for the purchaser, through the United States Postal Service or by common carrier to any other person at no cost to that person who becomes the owner of the printed sales messages. When you contract to sell advertising space in the publication you publish, you do not thereby sell tangible personal property. Rather, you are the consumer of, and tax applies to the sale to you of, tangible personal property (e.g., ink and newsprint) you use in producing the publication. The exemption for the sale of printed sales messages does not apply to sales of that property.

"3. If it is not considered a newspaper, periodical or printed sales message, then inserts from advertisers we place in the Mail Marketplace that are printed by a printing company, is that company responsible for charging sales tax or is the advertiser? The advertiser is usually under the assumption that all the inserts are going into 'newspapers' which are exempt presently. The advertiser also tells us what papers to place inserts."

Although the sale of ink and newsprint to you would not qualify for the exemption, the sale by a printer to an advertiser of an insert would qualify if the printer shipped the advertising insert in accordance with section 6379.5.

"4. If it is not considered a newspaper, periodical or printed sales message then, inserts we print for advertisers that are placed in the Mail Marketplace is there tax on the printing job? Or, is the insert considered a printed sales message (printed to special order for customer, 'mailed through the post office, no cost to household) therefore no tax on the print job to advertiser?"

The advertising insert is a printed sales message. If you contract to sell the inserts to your customer, insert the printed sales messages in the Mail Marketplace I, and mail them to the households. Your sale of the advertising inserts is exempt from tax under Revenue and Taxation Code section 6379.5.

"B. Mail Marketplace II

Printed by our company. All are delivered by direct mail through the post office each Wednesday to 6,000 households free. Advertisers of all types display their ads and place classified ads. There are no inserts into this paper. Editorial content is the same as described under Mail Marketplace I.

1. Again is the description given for Mail Marketplace I editorial content considered editorial?"

No, we believe that the in-house ads are includible in the advertising portion. There were no articles of general interest in the issue of Mail Marketplace II you sent for our review. We believe that it does not qualify as a newspaper or a periodical.

"2. If it is not considered newspaper, periodical or printed sales message then is there a use tax on newsprint?"

Yes, we believe that you are responsible for paying use tax on the tangible personal property (e.g., newsprint and ink) you incorporate into Mail Marketplace II.

"c. Discover the Delta

This paper is printed monthly. It is inserted into the Mail Marketplace I and our paid subscription newspapers only. It has more than 10% editorial content. It is free to households. I know it qualifies as a free newspaper."

1. I know if it is placed in our paid subscription newspapers (which the subscription has sales tax) there is no use tax. However, does it matter if it is inserted into the Mail Marketplace 1? My opinion is it is still a free newspaper and therefore no use tax for newsprint regardless if it is inserted or not. What is your opinion?"

As you are aware, Revenue and Taxation Code section 6362.7 provides an exemption from sales and use tax for the sale and use of tangible personal property which becomes an ingredient or component part of any newspaper or periodical that is distributed without charge and regularly issued at average intervals not exceeding three months, and any such newspaper or periodical. We believe that "Discover The Delta" qualifies as a periodical as defined in section 6362.7. We agree with your conclusion that sales of tangible personal property that you purchase to become an ingredient or component part of "Discover The Delta" are exempt from sales tax whether you distribute the periodical alone without charge or insert it into copies of Mail Marketplace I and distribute it without charge.

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

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