

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6450

October 23, 1991

Mr. S--- F. C---, President
A--- L--- P---
XXXX --- Road
---, CA XXXXX

SR -- XX-XXXXXX

Dear Mr. C---:

This is in reply to your August 12 and August 29, 1991 letters regarding the application of sales tax to charges by A--- L--- P--- for printing newspaper inserts.

You note that in all instances, you contract for the production and printing of the inserts with the retail businessperson whom you bill direct. Your contract is never with the newspaper itself. The newspaper contracts with the retail businessperson and bills that person for inserting and distributing the inserts.

Given the repeal of the exemption from sales tax for the sale of newspapers and periodicals effective July 15, 1991, you asked whether your charges are subject to tax when you sell a newspaper insert which is inserted into a newspaper that is sold at a newsrack or by subscription.

The State Board of Equalization has proposed amendments to Sales and use Tax Regulation 1590, Newspapers and Periodicals. Subdivision (b)(1) of the proposed regulation provides that tax does not apply to sales of tangible personal property to persons who purchase the property for incorporation as a component part of a newspaper or periodical which will be sold notwithstanding that the purchaser is not the seller of the newspaper or periodical. Accordingly, when you sell a newspaper insert to a customer for insertion in a newspaper that will be sold, you may accept a resale certificate from the customer.

You also asked whether tax would apply to your sale of such a newspaper insert which is inserted into a free newspaper. When you sell an insert which will be inserted into a newspaper that will be distributed free of charge, your sale of the insert cannot be considered a sale for resale. However, effective October 2, 1991, section 6362.7 was added to the Revenue and

Taxation Code to exempt from sales and use tax 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. Effective October 2, 1991, your sale of advertising supplements for insertion into such newspapers and periodicals distributed free of charge is exempt from tax. Your sale of such advertising supplements is subject to tax for the period July 15, 1991 through October 1, 1991.

Finally, you asked whether your sale of such an insert would be exempt from tax as a sale of a printed sales message if the insert were inserted into a free newspaper that is delivered direct to the U. S. Post Office for the purpose of mailing and would be received free by the postal patron.

Sales and use Tax Regulation 1541.5 provides that tax does not apply to the sale or use of printed sales messages which are:

- (1) Printed to the special order of the purchaser;
- (2) 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;
- (3) Received by any other person at no cost to that person who becomes the owner of the printed material.

If the newspaper advertising inserts you sell qualify as "printed sales messages" as defined in subdivision (a)(1) of Regulation 1541.5, and your sale and delivery of the inserts is in accordance with the criteria noted above, your sale is exempt from tax.

To satisfy the common carrier requirement of the regulation, it is necessary that a common carrier be involved in some stage of the delivery. If you deliver the inserts to your customer rather than ship them by common carrier to the newspaper publisher for distribution, your sale is subject to sales tax, and the exemption is not applicable.

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

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr