

**STATE BOARD OF EQUALIZATION**

(916) 322-3684

April 21, 1988

Mr. R--- D. A---, President
R--- D. A--- Publishing Co.
P. O. Box XXXXX
---, CA XXXXX

SR -- XX-XXXXXX

Dear Mr. A---:

Your February 3, 1988 letter requesting our opinion concerning the correct application of tax to a described transaction has been referred to me for a reply.

As I understand the fact, R--- D. A--- Publishing Company (A---) is a corporation that markets its products by mailing advertising brochures to nurses and other health professionals. A--- has an in-house printing and mailing division at the same location as the publishing division. A--- prints some of its advertising brochures and then mails the brochures from its mailing house division to persons who become the owners of the brochures at not cost. In addition, some brochures printed by printers other than A--- are delivered to and distributed by A---'s in-house mailing division. You request our opinion concerning the correct application of sales tax to such a transaction and how the tax would apply if the printing and mailing divisions were set up as separate corporations.

California Sales and Use Tax Law imposes sales tax on retailers based on gross receipts from the sale of tangible personal property in this state unless such sale is otherwise specifically excluded or exempted from taxation by statute (Rev. & Tax. Code § 6051). Revenue and Taxation Code Section 6006(a) defines a sale to mean and include a transfer of title or possession of tangible personal property for a consideration. Section 6379.5 exempts "printed sales messages for goods and services printed to the special order of the purchaser" from sales tax. Specifically, Section 6379.5 provides as follows:

“There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state 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 thereof.”

Applying the above criteria, it is our opinion that there has not been a sale of brochures in the described transaction where A--- prints and mails the brochures from its own in-house printing and mailing divisions, since such a transaction between related entities does not constitute a sale pursuant to Section 6006 of the Revenue and Taxation Code (Mapo, Inc. v. State Board of Equalization, 53 Cal.App.3d 245). Accordingly, since there has not been a sale of brochures, the exemption provided for in Section 6379.5 is not available to A---. Further, it is our opinion that the exemption in Section 6379.5 is not available where an outside printer (seller) prints the brochures to A---’s special order but then delivers the brochures to A---’s in-house mailing division for distribution, since we view the in-house mailing division as the same business entity as A--- and not A---’s agent. Therefore, since the brochures are delivered to the purchaser (A---), the exemption in Section 6379.5 is not available to the seller. We note, however, that if the printing and mailing divisions were separate and distinct corporate entities from A---, then the sale of such described advertising brochures to A--- would be exempt from tax, assuming the other requirements of Section 6379.5 are met.

I hope the above information is helpful. Enclosed for your review and reference is a copy of Sales and Use Tax Regulation 1541.5 (Printed Sales Messages) which interprets and applies the Code.

Very truly yours,

Robert J. Stipe
Tax Counsel

RJS:sr

Enc.

cc: Mr. Glenn A. Bystrom
Principal Tax Auditor

Mr. Leon Adams
--- District – Auditing