



STATE BOARD OF EQUALIZATION

February 27, 1987

Mr. S--- F. C---, President
M--- A--- S---, Inc.
P. O. Box XXXXX
---, CA XXXXX

Dear Mr. C---:

This is in reply to your January 26, 1987 letter regarding the recent addition of section 6379.5 to the Revenue and Taxation Code.

Specifically, you noted that you are in the business of providing advertising circulars to supermarkets. The circulars are printed on newsprint. The merchants call or mail in their advertising copy, and you produce the circular in its entirety. You perform the typesetting, layout, printing, affixing of mail labels and delivery to the store and/or the United States Post Office. Given this information, you asked whether the exemption applies to your sales of:

“(1) Circulars that are delivered direct to and mailed by the U. S. Post Office.”

Revenue and Taxation Code section 6379.5 provides:

“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.”

If your delivery of the advertising circulars to the United States Post Office is to mail the circulars to the customers of the merchants, the sale qualifies for the exemption. On the other hand, if your delivery of the circulars to the Post Office is to mail them to the merchants, the sale does not qualify for the exemption because the delivery would not be “to any other person at no cost to that person who becomes the owner thereof.”

“(2) Circulars that are delivered to our customer and then delivered to and mailed by the U.S. Post Office.”

Tax would apply to this sale. As noted above, if you deliver the circulars to the merchant, the sale does not qualify for the exemption.

“(3) Circulars that are handed out by a distributor on a door to door basis.”

The sale qualifies for the exemption where you deliver the circulars to a distributor which qualifies as a common carrier for distribution to the prospective customers of the merchants. A common carrier is a person engaged in the business of transporting property for hire and who offers the services indiscriminately to the public.

“(4) Circulars that are inserted in a newspaper.”

Revenue and Taxation Code section 6362 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 issued at average intervals not exceeding three months and any such newspaper or periodical.” Advertising circulars are considered as component parts of a newspaper or periodical when attached to or inserted in and distributed with the newspaper or periodical. Accordingly, your sales of circulars that are for insertion in a newspaper are exempt whether or not you deliver the circulars to the merchant. We are enclosing a copy of Sales and Use Tax Regulation 1540, Newspapers and Periodicals, for your further information.

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

Very truly yours,

R. L. Dick
Tax Counsel

RLD:sr

Enc.