

**STATE BOARD OF EQUALIZATION**

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August 27, 1990

Mr. J--- P. P---
Tax Manager
[A---] Corporation
XXXX --- Court
--- ---, IL XXXXX

SZ --- XX-XXXXXX

Dear Mr. P---:

This is in reply to your June 18, 1990 letter regarding the application of sales and use tax to sales of circulars based on the following facts you provided:

“1) [A---] Corporation is organized as a cooperative corporation whose stockholders are independently-owned hardware dealers who have membership agreements with the company. These membership agreements with the Company entitle these retail hardware dealers to purchase merchandise and services from it and to use the Company’s trademarks, service marks, and trade names.

“2) One of the services that [A---] provides to its dealers is what is known as the Build Your Own (B.Y.O.) Circular Program. Under this program, [A---] provides its member dealers with rough layouts of an advertising circular....It also provides the dealer with a number of replacement items that may be substituted for those items included in the rough layout. With exception of certain products, the [A---] logo and some artwork, the dealer is free to make any changes they want to these layouts including product changes, price change, listing the store name on the cover, adding pictures, adding additional pages, etc.

“3) After making the changes that the dealer wants, the dealer forwards the customized layouts and a completed B.Y.O. Circular order form to an [A---] approved regional printer. The printer then makes the dealers changes and sends a proof copy of the customized circular to the dealer to make any final corrections or additions.

“4) The printer makes the dealers final corrections and ships the customized circulars to the address indicated by the dealer on the circular order form. These circulars are generally shipped by common carrier to the dealer’s store, a newspaper or mailing house. When the circulars are shipped to some place other than the store, a small portion of the order (1% - 2% of the total order) may be shipped to the store for in-store use.

“5) The printer invoices [A---] Corporation for the circulars. [A---] Corporation adds an administration fee (the greater of 3% of the invoice or \$30.00) to the total billed by the printer and invoices the dealer.”

Given this information, you asked for our opinion as to whether the sale of the circulars is exempt from sales and use tax under either Sales and Use Tax Regulation 1591.5, Printed Sales Messages, or 1590, Newspapers, under the following circumstances:

“1) The customized circulars are shipped via common carrier by the printer directly to a mailing house for distribution.”

Sales and Use Tax Regulation 1541.5 provides the California State Board of Equalization’s interpretation of Revenue and Taxation Code section 6379.5. Subdivision (b) of the regulation 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.

Subdivision (a)(1) of the regulation provides that “printed sales messages” means and is limited to catalogs, letters, circulars, brochures, and pamphlets printed for the principal purpose of advertising or promoting goods or services. We believe that it is clear that the circulars in question qualify as “printed sales messages”. Although [A---] Corporation provides a layout to the dealers, the dealers have the option to substitute items, prices and illustrations and to increase the number of pages of the circulars. We believe then that the printed sales messages are printed to the special order of the purchaser. Our conclusion would be different if [A---] Corporation did not provide such an option.

Assuming, of course, that the mailing house ships the circulars to third persons who become the owners of the printed sales messages at no charge, the sale is exempt from tax under Regulation 1541.5.

“2) The customized circulars are shipped via common carrier by the printer directly to a newspaper publisher for insertion and distribution with the newspaper.”

Sales and Use Tax Regulation 1590 provides the Board’s interpretation of Revenue and Taxation Code section 6362. Subdivision (b)(1) of the regulation provides that tax does not apply to sales of tangible personal property which becomes an ingredient or component part of any newspaper or periodical as defined in the regulation. Subdivision (a)(1) of the regulation defines the term “newspaper”:

“The term ‘newspaper’ as used herein conforms to the definition of a newspaper as set forth in a ruling of the United States Treasury Department published in the Federal Register, December 29, 1960. Under this definition, the term is limited to those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of a general interest. The term does not include handbills, circulars, flyers, or the like, unless distributed as a part of a publication which constitutes a newspaper within the meaning of this subparagraph. Neither does the term include any publication which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within the meaning of this subparagraph. For purposes of this subparagraph, advertising is not considered to be news of a general character and of a general interest.”

Tax does not apply to your sales of circulars that are sent to a newspaper publisher for insertion and distribution with a newspaper.

“3) The customized circulars are shipped via common carrier by the printer directly to the [A---] dealer who then forwards them to a mailing house for distribution.”

Under this circumstance, because the circulars are delivered to the purchaser rather than to another person at no cost to that person, the printed sales message exemption does not apply, and the sale is subject to tax.

“4) The customized circulars are shipped via common carrier by the printer directly to the [A---] dealer who then forwards them to a newspaper publisher for insertion and distribution with the newspaper.”

As noted above, tax does not apply to the sale of the circulars which will be inserted in and distributed with the newspaper. (Reg. 1590. Subd. (b)(1) and (a)(3).)

You noted in your facts that, when the circulars are shipped to some place other than the store, a portion of the order may be shipped to the store for in-store use. In such case, tax applies to the gross receipts or sales price attributable to the sale of the circulars delivered to the store. Neither of the exemptions provided in Regulation 1541.5 and 1590 is applicable to the sale of those circulars. See the example discussed at Regulation 1541.5, subdivision (d)(7).

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

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD:sr

Encs.