



432.0029.5

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-3828

August 1, 1988

REDACTED TEXT

REDACTED TEXT

Dear REDACTED TEXT:

This is in reply to your May 23, 1988 letter regarding the application of sales tax to sales to Personal Resource Systems, Inc., of printed matter which qualifies as "printed sales messages" under Sales and Use Tax Regulation 1541.5. You posed the following circumstances and questions:

"CIRCUMSTANCE #1

For every piece mailed 10% will be returned by the post office with corrected addresses. In order to re-mail to the corrected addresses we will have extra printed at the time of the original printing. These will be delivered to us (the purchaser).

Approximately 30-60 days later we will deliver these to the 'mail house' for re-mailing by common carrier. The only difference is that we are taking consignment for a short period. Is this exempt from tax?"

Regulation 1541.5 is based upon a specific exemption from tax provided by Revenue and Taxation Code section 6379.5 which 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."

Generally, in order for the sale of a printed sales message to qualify for the exemption, the "printed sales message" as defined in the regulation must be:

1. Printed to the special order of the purchaser for the principal purpose of promoting goods or services offered for sale;
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 person, other than the purchaser or purchaser's agent, at no cost to that person who becomes the owner of the printed materials (the donee).

If the printer delivers the printed matter to you, tax applies to the sale by the printer regardless that you may shortly later deliver the printed matter to a mailing house for delivery to the donee by common carrier. It is a well established principle of law that tax exemption statutes are to be strictly construed, and the Board of Equalization does not have the authority to grant an exemption unless the facts clearly support one. (Standard Oil v. State Board of Equalization, 39 Cal.App.3d 765; American Distilling Company v. State Board of Equalization, 55 Cal.App.2d 799.)

"Circumstance #2

We also use the pieces as an insert with every order that we ship from our offices. The purpose is promotional and is done at no cost to the customer. In order to do this we will have extra printed at the time of the original printing. These will be delivered to us (the purchaser). All orders are shipped from this office by 'common carrier'. The only difference here is that we are doing the mail house service and including them with the product along with packslip. Is this exempt from tax?"

No, as noted above, tax applies to the sale of the printed matter which is delivered to you. Specifically, Sales and Use Tax Regulation 1589 provides at subdivision (c)(1) that sales tax applies to sales of such items as advertising matter used in connection with the sale of property or enclosed with the property sold.

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

bc: San Diego District Administrator