

**STATE BOARD OF EQUALIZATION**

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March 29, 1989

Mr. J--- V. G---
Vice President
B--- of --- ---, Inc.
XXX --- Street
--- ---, CA XXXXX

B--- of --- ---, Inc. – SR -- XX-XXXXXX
Printed sales messages – Prospectuses delivered to
underwriters

Dear Mr. G---:

In your January 23, 1989 letter to me, you ask that we advise you whether the transactions you describe in your letter are subject to sales or use tax, or qualify as nontaxable printed sales messages. You write:

“We would like your opinion on three transactions, the first two involve Prospectuses:

- "1. Sales of Prospectuses to R--- T---, Inc.
 - a. B--- ships Prospectuses through the mail at no cost to underwriters who in turn distribute them to the investors who buy the stock.
 - b. A copy of the agreement with the underwriters is attached. (See section 5(c) on page 7).

- "2. Sales of Prospectuses to P--- A--- L---.
 - a. B--- ships Prospectuses to R---’s B---, a mailing house.
 - b. P--- acts as its own underwriters.

- c. Prospectuses are shipped by the mailing house at no cost to broker/dealer firms and investors. The broker/dealer firms give copies to potential investors.
- "3. Sales of equipment catalogs to L--- (sample attached).
- a. B--- ships catalogs to the S--- N---mailing house.
 - b. 80% of the catalogs are shipped at no cost to individuals who are end users (equipment buyers).
10% are sent in bulk at no cost to field reps (employees) who are located in and out of state.
10% remain in inventory for an undetermined future distribution as noted above."

Opinion

With respect the first to transactions you describe, involving the sales of prospectuses, our opinion is that the prospectuses qualify as printed sales messages exempt from sales and use tax under Sales and Use Tax Regulation 1541.5 because either the seller or a mailing house acting on behalf of the purchaser ships the printed sales message to persons who acquire the printed sales message at no cost to themselves, and who will, in turn, distribute the printed sales messages to others, also at no cost. It makes no difference the third parties who receive the prospectuses are underwriters, or broker/dealer firms, or potential investors. The conditions for the printed sales message exemption are met because neither the underwriters nor the broker/dealer firms nor the investors have made any payment to either the seller or the purchaser of the prospectuses.

With respect to the third transaction you describe, regarding sales of equipment catalogs, our opinion is that 80% of the catalogs qualify as printed sales messages delivered in accordance with the requirements of Regulation 1541.5, and accordingly sales or use tax does not apply to the charges B--- makes for its sales of that portion of the catalogs.

With respect to 10% of the catalogs which remain in inventory for undetermined future distributions, our opinion is that tax applies to B---'s charges for that portion of the catalogs. In this instance, the mailing house is not acting as the agent for the purchaser for the purpose of mailing the catalogs, but rather is storing the catalogs for an undetermined period of time on behalf of the purchaser. The sales or use tax will apply to sales of printed sales messages if the delivery conditions of Regulation 1541.5(b) are not met.

With respect to 10% of the catalogs which are sent in bulk to field representatives of the purchaser, B---'s sales of that portion of the catalogs do not qualify as printed sales messages exempt from tax, since the field representatives are agents or employees of the purchaser, and are not third parties who will receive the catalogs free of charge. However, please not that if B--- is required by its contract of sale with L--- to ship that portion of these catalogs to an out-of-state location or locations, the sale of that portion will qualify as a shipment in interstate commerce exempt from sales tax under Regulation 1620(a)(3)(B). For purposes of the interstate shipment exemption, a mailing house may act as a forwarding agent provided its role is to fulfill B---'s

contractual requirement to ship the catalogs out of state, and not to hold the catalogs in inventory for the buyer.

I enclose copies of Regulations 1541.5 and 1620 for your information. Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott
Tax Counsel

JA:jb
Enclosures