

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
(916) 445-8485

December 1, 1988

R--- W--- and Associates  
XX --- ---, Ste. "---"  
---, CA XXXXX

RE: SR -- XX-XXXXXX

Dear Mr. W---:

This is in response to your September 12, 1988 letter to the Board's legal staff. You have requested an opinion concerning general questions on printed sales messages pursuant to Revenue and Taxation Code section 6379.5 and Sales and Use Tax Regulation 1541.5

Specifically, you write as follows:

Question #1: To qualify for the deduction am I, the producer of such material, responsible for the methods used or how often the sales literature is mailed or delivered through the US Mail or other common carrier? Since many purchasers of such material have "internalized" their distribution activities they, in a sense, act as their own "mailing house".

Question #2: If I produce sales material that is distributed in the manner described in the circular, then an unknown quantity the sales material is later used as "give-away" literature for walk-in traffic, how do I determine exemption the status?

Question #3: Most newsletters are produced with the intent to sell or promote goods and services by outright advertisement or by subtle journalism. Also, most newsletters are produced solely for the immediate distribution through the mail at no cost to the recipient. Therefore, are not newsletters exempt from sales and use tax?

Question #4: Some display advertisements are produced and placed in publications (such as trade journals, "buyers guides", et cetera) that are distributed free to the public through the U.S. Mail or other common carrier. Are such display ads also exempt?

Question #5: If any or all of the questions I have asked results in sales tax refunds to my clients, please explain the procedures I should use to attain these refunds (plus any penalties or interest that were charged for exempted sale tax that was paid late) and what regulations govern the legal and proper distribution of such refunds to my clients.

Except where the sales are specifically exempted by statute, sales tax applies to the gross receipts of retailers from all retail sales of tangible personal property in this state (Revenue and Taxation Code section 6051). Section 6379.5 of the Revenue and Taxation Code and Regulation 1541.5 provides an exemption from tax for the sale, storage, use or other consumption in this State of catalogs, letters, circulars, brochures, and pamphlets consisting substantially of printed sales messages for goods or services. To qualify for the exemption, the printed sales messages must be:

1. Printed to the special order of the purchaser for the principal purpose of advertising or promoting goods or services.
2. Mailed or delivered by the seller of the printed material, the seller's agent or a mailing house acting as an 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 material.

#### Discussion:

Question #1: Any time the purchaser receives delivery of the printed sales message, tax is applicable on that sale. The delivery of the printed sales message must be performed by a "mailing house" or "common carrier" as defined within Regulation 1541.5(a)(3) and (a)(4).

Question #2: As long as the three criteria of Regulation 1541.5 are met then sales tax is not applicable on the sales of printed sales messages. If, however, 75 percent of the printed sales messages satisfy the criteria of Regulation 1541.5 and the other 25 percent does not, since the purchaser has received delivery of the 25 percent then tax would apply to the 25 percent delivered to the purchaser.

Question #3: If the news letters' principal purpose is to promote or advertise goods or services and the news letters satisfy the criteria of Regulation 1541.5, then tax is not applicable on their sale. On the other hand, should the news letters contain news or information of general interest to the public, or some particular organization or group of persons, then that news letter will not be

considered a printed sales message but may still be exempt pursuant to Regulation 1590 as a newspaper or periodical.

Question #4: Provided the delivery requirements of Regulation 1541.5 are satisfied, the displayed advertisements will be exempt since they are for the principal purpose of advertising and they are received free of charge by its recipient.

Question #5: Sales and Use Tax Regulation 1700 applies and interprets the code with respect to reimbursement for sales tax. If you have already refunded the excess sales tax reimbursement collected from customers, then Regulation 1700(b)(3)(A) provides the documentation that you would need in order to support your claim for refund with the Board. If you have not refunded the excess sales tax reimbursement that you collected, then Regulation 1700(b)(3)(B) provides the means by which you should refund the excess tax and the supporting documentation you should keep in your records in order to support your claim for refund when you file a claim for refund with the Board.

I have enclosed Regulation 1541.5 (Printed Sales Messages), 1590 (Newspapers and Periodicals), and 1700 (Reimbursement for Sales Tax) for your information. If you should have any further questions, please feel free to write again.

Very truly yours,

E. L. Sorensen, Jr.  
Tax Counsel

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Enclosures