

**STATE BOARD OF EQUALIZATION**

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

May 22, 1989

Ms. D--- U---, Chief Finance Officer
--- & --- L---, Inc.
XXXX- North --- Way
---, California XXXXX-XXXX

Re: SR -- XX-XXXXXX

Dear Ms. U---:

Your February 21, 1989 letter to the board's Santa Ana office has been referred to the legal unit for reply. Your request for an opinion concerns various printed materials which you enclosed for our consideration. You asked whether some are exempt printed sales messages and whether others are exempt periodicals.

Except where the sales are specifically exempt by statute, sales tax applies to the gross receipts of retailers from all retail sales of tangible personal property in this state (Rev. & Tax. Code § 6051.)

Newspapers and Periodicals

You enclosed five publications for consideration as exempt periodicals. They include:

1. Floriculture Directions (published monthly),
2. NTS Tech Briefs (published six times per year),
3. Wycliffe Associates Newsletter published ten times per year),
4. KIK International (published four times per year), and
5. Hitco Hot Shots (published four times per year).

Sales and Use Tax Regulation 1590 provides the criteria for the sale of a publication to be exempt from sales tax as the sale of a periodical.

Regulation 1590(a)(2) provides:

“The term ‘periodical’ as used herein is limited to those publications which appear at stated intervals, each issue of which contains news or information of general interest to the public, or to some particular organization or group of

persons. Each issue must bear a relationship to prior or subsequent issues in respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them. Each issue must be sufficiently similar in style and format to make it evident that it is one of a series. . . .”

Regulation 1590(b)(1) provides:

“Tax does not apply to sales of tangible personal property which becomes an ingredient or component part of any newspaper or periodical as defined herein, regularly issued at average intervals not exceeding three months, nor to the sale of any such newspaper or periodical.”

Our review of the enclosed publications indicates that each contains news and information of general interest to the public or to some particular organization or group of persons. Each is regularly issued at average intervals not exceeding three months and each contain more than 10 percent news or information. Therefore, assuming that each is a representative sample, it is our opinion that each of the five enclosed publications is an exempt periodical as defined in Revenue and Taxation Code § 6362(a) and Sales and Use Tax Regulation 1590(a)(2).

Printed Sales Messages

You enclosed the following for consideration as printed sales messages:

1. Floriculture Directions Sales Brochure “Enjoy the Regarding Fulfillment of Profitable Success.”
2. Envelope for mailing No. 1.
3. Floriculture Directions Promotional Letter.
4. Envelope for mailing No. 3.
5. Design with Flowers Promotional Letter.
6. Envelope for mailing No. 5.
7. Floriculture Directions Promotional Brochure “Are You Interested in Growing. . . .”
8. Envelope for mailing No. 7.
9. Floriculture Directions Sales Promotion Brochure “Would you pay 30¢ for a new idea”
10. Envelope for mailing No. 9.
11. Infotek Sales Brochure “More Memory for HP 330/350/370”
12. Sales Brochure for Scan-Optics.

Revenue and Taxation Code Section 6379.5 and Regulation 1541.5 provide an exemption from tax for the sale or use in this state of catalogues, letters, circulars, brochures and pamphlets consisting substantially of sales messages for goods and 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.

In addition, subpart (b)(7) of Regulation 1541.5 provides that tax is not applicable to charges for containers such as envelopes when they are sold with the printed sales messages for shipment or delivery, or when sold to persons who place the printed sales messages in the container and sell the printed sales messages together with the container with the container.

You state in your letter that you deliver the printed material to a mailing house for delivery and that your customer never receives such printed materials. It is also apparent that the printed material is printed to the special order of the purchaser and that the principal purpose is for advertising or promoting goods or services. Further, the person to whom the printed material is sent receives it at no cost and becomes the owner of the printed material. Therefore, it is our opinion that each of the twelve enclosures is either an exempt printed sales message or an envelope which is sold with the printed sales message for shipment or delivery, and tax does not apply to your sale under the circumstances noted above.

You also enclosed a 1989 price list from K--- N--- Company, Inc. The price list is comprised only of a listing of the item for sale and its price. The Board has taken the position that such price lists serve only for informational purposes and are not promotional in nature. Therefore, criterion No. 1 as enumerated above is not satisfied, since the principal purpose of this price list is not to advertise or promote goods or services.

I have enclosed Regulations 1591 (Newspapers and Periodicals) and 1541.5 (Printed Sales Messages) for your information, please feel free to write again.

Very truly yours,

E. L. Sorensen, Jr.
Senior Tax Counsel

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Enclosures