

**STATE BOARD OF EQUALIZATION**

(916) 445-6450

May 9, 1991

Mr. M--- J---  
A--- L---, Inc.  
XXXXX --- ---  
---, CA XXXXX-XXXX

SY -- XX-XXXXXX

Dear Mr. J---:

This is in reply to your February 27, 1991 letter to the --- District Office of the State Board of Equalization. Your letter asks for the application of sales tax to your charges for cards which you sell to C--- S--- and O--- N--- Insurance Company. The cards are 3 ½" x 7 ½" envelope inserts which advertise an insurance program for holders of credit cards issued by [Bank]. You print the inserts and send them directly to two [Bank] card centers which send them to the cardholders in the envelope containing the credit card statements.

The applicable exemption from the sales tax is 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.”

It is clear that the cards qualify as “circulars...consisting substantially of printed sales messages for goods and services printed to the special order of the purchaser.” The remaining issue is whether the circulars are mailed or delivered in accordance with the statute.

Since you ship the circulars to [Bank], your sale will qualify for exemption if [Bank] is a "mailing house, acting as an agent for the purchaser." Sales and Use Tax Regulation 1541.5, Printed Sales Messages, defines "mailing house" at subdivision (a)(3) to mean any person engaged in the business of stamping, addressing, sealing or otherwise preparing property for mailing for compensation. During our telephone conversation, you noted that you believe that C--- S--- compensates [Bank] for mailing the cards. We believe that C--- S---' contract with [Bank] for the mailing must be an arm's length transaction whereby C--- S--- provides a true compensation to [Bank] for mailing the circulars. If such is the case, we believe that, for purposes of section 6379.5, [Bank] is a mailing house, acting as the agent for C--- S---, and your sale of the printed sales messages would be exempt from sales tax.

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

Very truly yours,

Ronald L. Dick  
Senior Tax Counsel

RLD:sr