



STATE BOARD OF EQUALIZATION

(916) 445-6450

January 9, 1989

Mr. J--- H. M---
M--- C--- C---, Inc.
XXX --- ---
---, CA XXXXX

Dear Mr. M---:

This is in reply to your November 11, 1988 letter regarding the application of tax to charges for printed sales messages. Specifically, you asked the following questions:

“Specific Reference to (d)(5)

Question: Would the transaction still qualify as a tax exempt transaction assuming it met all the other requirements if the company contracted separately with an agency to do the mechanical through the color separation process and the printed doing the printing with each company billing separately or does there have to be one billing either from the printer for the entire job or the agency for the entire job.”

Sales and Use Tax Regulation 1541.5 is based on 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.”

Under the facts you gave, if the company contracted to buy a mechanical from an advertising agency, the sale by the advertising agency would not qualify as a sale of printed sales messages. Rather, only the printer's sale of the printed matter could qualify as exempt under section 6379.5.

You then asked for our opinion as to the application of tax to the following hypothetical:

“Agency purchases for resale photography, art and other products or services that become a component part of the finished product, passes title to company prior to any use by Agency. Agency partially develops product in one geographical area, ships it to another geographical area, both in California, for completion by another contractor working for agency who, in turn, ships to an out-of-state printer who prints the insert and ships it directly to California newspapers for distribution with an exempt certificate from the customer. Customer is billed for mechanical/color separation separately from the printing.”

We assume that, in this case, the company is contracting only with the advertising agency for the purchase of the printed matter. Under the facts you provide, the application of tax to the advertising agency's charge for the photography, art, and other property it purchases for resale depends upon whether the advertising agency makes any use of the property in California prior to shipping it out of state. For example, if the advertising agency produces, or has the subcontractor produce, a color separation in California, the photography and art do not become an ingredient or component part of the color separation. The image embodied in the photograph or art is only reproduced in the color separation, and the photograph or art is used as a printing aid in producing the color separation. Since the advertising agency sells the photograph and art prior to such use, and the sale is in California, sales tax applies to the advertising agency's sale of the printing aids. This is true regardless that the sale of the color separation may be exempt from sales tax as a sale in interstate commerce (Rev. & Tax. Code § 6396) and that the sale or use of the printed matter may qualify for exemption under either section 6379.5 as a sale or use of a printed sales message, or section 6362 as a sale or use of a component part of a newspaper. See Sales and Use Tax Regulation 1541, Printing and Related Arts, at subdivision (e)(2).

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

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD:sr