

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6450

September 24, 1991

Mr. J--- S---
T--- S--- Company
P. O. Box XXXXX
---, CA XXXXX

Dear Mr. S---:

This is reply to your August 5, 1991 letter regarding the application of sales tax to your sales of printed flyers under the following facts you presented:

“We solicit specialized printing of flyers from real estate offices all over the United States. Enclosed are some examples.

“The companies that use our service order these flyers in quantity from our company to use as a direct mail advertising piece that is mailed to their local customers. Most of these companies order 500 to 10,000 flyers per month, every month. We print them, ship them by UPS to these companies all over the country each month.

“Most of our customers are from out of state and the junk mail flyers that we print are shipped to customers in other states. About 10% of our customers are in California.”

You noted that you believe the sale of this “junk mail” has been exempt from California sales tax and asked whether the exemption is still applicable. The exemption to which you refer is provided by revenue and Taxation Code section 6379.5. The State Board of Equalization adopted Sales and Use Tax Regulation 1541.5, Printed Sales Messages, to implement the exemption. As provided in subdivision (b) of the regulation, tax does not apply to the sale or use of printed sales messages which are:

- (1) Printed to the special order of the purchaser;
- (2) 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;
- (3) Received by any other person at no cost to that person who becomes the owner of the printed material.

After reviewing the publications you sent for our review, we do not believe the exemption applies to your sale of the publications. Subdivision (a)(1) of the regulation defines printed sales messages to mean and be limited to catalogs, letters, circulars, brochures, and pamphlets printed for the principal purpose of advertising or promoting goods or services. The term does not include newspapers or periodicals.

The flyers you sent do not contain printed sales messages that promote the sale of goods or services. Also, you note that you deliver the printed material to your customer who then distributes the publications. Your sale is not exempt under Regulation 1541.5.

On the other hand, the publications contain articles concerning real estate. The two publications have a May 1991 issue date. You indicate that you sell the publications monthly. Therefore, we assume that the sales of the publications prior to July 15, 1991 qualified as exempt from tax as sales of exempt periodicals, pursuant to Revenue and Taxation Code section 6362, which provided an exemption from sales and use tax for the sale and use of tangible personal property which becomes an ingredient or component part of any newspaper or periodical regularly issued at average intervals not exceeding three months and any such newspaper or periodical.

Effective July 15, 1991, the exemption for the sale of newspapers and periodicals was repealed. On and after that date, your sales of the publications to companies which distribute them free of charge are subject to sales tax. When you are required pursuant to your contract with your customer to ship the publications out of state and do ship the publications out of state by delivery to a carrier, customs broker, or forwarding agent, your sale is exempt from sales tax. (Rev. & Tax. Code § 6396.)

We note that the Legislature is considering two bills, Assembly Bill 23x and Senate Bill 89, which would, if passed, reinstate the exemption from sales and use tax for the sale and use of tangible personal property which becomes an ingredient or component part of any newspaper or periodical that is distributed without charge and regularly issued at average intervals not exceeding three months, and any such newspaper or periodical. However, unless and until the exemption is reinstated, your sales of the publications are subject to 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