



STATE BOARD OF EQUALIZATION

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May 17, 1990

Dear Mr. X-----,

This is in reply to your April 3, 1990 letter to Tax Counsel David Levine regarding the application of California Revenue and Taxation Code section 6379.5 to X-----'s activities in California. You provided the following facts:

“The taxpayer, X-----, is an Illinois corporation registered and qualified to do business in the State of California.

“X----- is a national wholesaler of office products and supplies. Each year X----- -- contracts with several printing firms to produce advertising materials (catalogs and fliers) for its dealers. Said dealers are not agents of X----- but are independent retailers. These advertising materials display and describe the various products which a consumer can purchase from X----- dealers. Both the catalogs and the fliers are produced for the dealers and imprinted with the dealer’s own name and design on the cover.

“All of the advertising materials are printed for X----- in either Arkansas, Wisconsin or Georgia, by an outside printing firm, and are shipped directly from the printer by common carrier to either the dealer or the dealer’s customer. Advertising materials which are shipped directly to the dealer by the printer are distributed by the dealer to the end user customer free of charge. Likewise, advertising materials which are shipped to the dealer’s customer are shipped free of charge.

“In all cases, X----- considers its dealers as the purchaser of the advertising materials and charges its dealers its selling price of the materials plus sales tax.”

Given this information, you asked whether sales tax applies to the charges by X----- for the advertising materials in those situations where the advertising materials are shipped directly from the printer to the dealer’s customers.

Since the sale of the property occurs out of state, the California sales tax would not be applicable. (Cf. Rev. & Tax. Code § 6051.) Rather, if the transaction were subject to tax, the applicable tax would be the California use tax which is imposed upon the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. (Rev. & Tax. Code § 6201.) A retailer engaged in business in this state and making sales of tangible personal property for storage, use or other consumption in

this state is required to collect the tax from the purchaser and report and pay it to this Board. (Rev. & Tax. Code §§ 6203, 6204.)

As you know, section 6379.5 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.”

Enclosed is a copy of Sales and Use Tax Regulation 1541.5, Printed Sales Messages, which provides the Board’s interpretation of section 6379.5. Subdivision (a)(2) of the regulation defines the term “printed to the special order” to mean “designed and prepared according to the specific request of the purchaser”. We understand that, during a telephone conversation with MR. Levine, you stated that the advertising materials are printed to the special order of X----- rather than to the order of the dealers. In such case, we believe that the advertising materials were not “printed to the special order of the purchaser” as required in subdivision (b) of the regulation, and your sale of the catalogs and fliers to dealers does not qualify for exemption under section 6379.5.

As noted above, however, the California use tax is imposed upon the use of tangible personal property purchased for use in this state. Under the facts you provide, the dealer’s use of the catalogs and fliers is the donation of the products to its customers. When the dealers have the printers ship the catalogs and fliers directly from an out-of-state location to the dealer’s customers in California, the dealer’s use of the property is complete at the time title passes to the property out of state, and the dealers are not liable for use tax. (See Bus. Taxes Law Guide Annot. 280.0360.)

In summary, when X----- sells catalogs and fliers to its California dealers and the property is shipped directly from the out-of-state printer to the dealer’s customers in California at no cost to the dealer’s customers, X----- sale of the tangible personal property is neither subject to California sales nor use 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

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