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**STATE BOARD OF EQUALIZATION**

October 30, 1964

Mr. I. E. L---  
Excise Tax Supervisor  
R--- O--- Corporation  
--- South --- Street  
--- ---, CA XXXXX

XX-XXXXXX

Dear Mr. L---:

Bill Denny has requested me to reply to your letter of October 1, 19XX, concerning the purchase of advertising materials delivered to a mailing agency for shipment to points outside this state.

We do not question that a mailing agency engaged in the business of arranging for mailing of goods and holding itself out to the public as engaged in such a business qualifies for a "forwarding agent", as that term is used in Ruling 55. It is still necessary, however, for the sale to be exempt as a sale in interstate commerce, that the seller be required by the contract of sale to ship the property to a point outside the state. One means of fulfilling this requirement is delivery by the retailer to a forwarding agent for shipment outside this state.

If the purchaser instructs the printer to deliver the material to the mailing agency and this is done, and the purchaser subsequently instructs the mailing agency to ship some portion of the property to a point outside this state, we do not believe that the seller has met the requirements of Ruling 55(a)(1)(C). The seller is not a party to any contract calling for shipment of the material to a point outside the state. Such shipment is not, therefore, pursuant to the contract of sale. This appears to have been the basis for our July 7, 19XX letter to you which is, apparently, the letter mentioned in the first paragraph of your letter of October 1.

If on the other hand, the seller is directed by the purchaser to deliver to a mailing agency certain property which is marked with an out-of-state destination, or if after delivery of the property to the mailing agency the seller instructs the agency to deliver property to a point outside the state in accordance with the original contract of sale or any supplement thereto, the seller would make the delivery to the mailing agency for out-of-state shipment in accordance with the terms of the sales agreement and the sale would be exempt.

Provided the property is <u>actually</u> sent out of state by the mailing agency. (See Erga v. SBE). DHL 6/15/92.
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Your letter states that your contracts for printing of advertising material usually provide that the printer will hold the material until ordered by the taxpayer to deliver to the mailing agency, where instructions have been given as to the points to which such material is to be mailed. You also state that your purchase order usually indicates that certain quantities of the printed material will be shipped to pint outside the State of California.

In view of the statement in the third paragraph on page 2 of your letter that some of the items ordered will be delivered by the vendor to a forwarding agent for shipment to a point outside California, it appears that the requirements of the ruling have been complied with. This is so because, as you state, a quantity (to be shipped outside the state) will be determined before the material leaves the hands of the vendor, and the determination at that time would be in the nature of a supplement to the contract of sale or purchase order. This, of course, assumes that the vendor would have in his possession at the time of audit a copy of such purchase order of supplement showing the out-of-state destination of the goods on account of which exemption would be claimed by the vendor.

Sincerely,

E. H. Stetson  
Tax Counsel

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