



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
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January 9, 1992

Mr. R--- R. H---
Publisher
G--- T--- P---, Inc.
P.O. Box XXXX
---, CA XXXXX-XXXX

Dear Mr. H---:

This is reply to your November 25, 1991 letter regarding the application of sales tax to your sales of magazines. You note the following facts:

“We are a for-profit corporation incorporated in the State of California. In 1992 will begin publishing a national magazine for older readers. Our magazines will be sold exclusively on a subscription basis. In addition, each month a number of copies will be distributed free to certain preselected households, senior centers, libraries and other sites.”

Given this information, you asked the following specific questions:

“1. Will sales tax be due on magazines distributed to a paid subscriber residing in California?”

Yes, your retail sales of magazines to a subscriber and shipped to a location in California are subject to sales tax.

“2. Will sales tax be due on magazines distributed to a paid subscriber residing outside of California?”

Revenue and Taxation Code section 6396 provides an exemption from sales tax for the sale of tangible personal property which, pursuant to the contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer. If, pursuant to your contract, you mail the magazines to a point outside this state, your sale is exempt from sales tax.

“3. Will sales tax be due on a subscription purchased by a California resident as a gift for someone residing in California?”

Yes, your retail sale of the magazines in California and shipped to a point in California is subject to sales tax.

“4. Will sales tax be due on a subscription purchased by a California resident as a gift for someone residing outside of California?”

No, if the contract requires you to ship the subscriptions outside the state and you ship the magazines to a person outside California, your sale is exempt from sales tax.

“5. Will sales tax be due on a subscription purchased by someone residing outside of California as a gift for a resident of California?”

Yes, your sale of magazines which you will ship to a point in California is subject to sales tax.

“6. Will sales tax be due on magazine copies delivered free to certain preselected households, senior centers, libraries and other sites located in California?”

No, effective October 2, 1991, section 6362.7 was added to the Revenue and Taxation Code to exempt from sales tax sales 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. The State Board of Equalization has authorized publication of amendments to Sales and Use Tax Regulation 1590, Newspapers and Periodicals. A copy of the proposed amendments is attached. Subdivision (b)(2) of the proposed regulation provides that distributions of complimentary copies of such periodicals are exempt from sales and use tax.

“8. For the purpose of filing sales tax returns with the State Board of Equalization, is sales tax incurred only at the time of delivery of each issue (thereby necessitating a pro-rata distribution of the tax charged on a paid subscription)?”

As noted at subdivision (b)(1) of proposed Regulation 1590, sales tax must be reported and paid by the publisher or distributor based upon the reporting period within which the delivery is made.

“9. Does a resale number enable a magazine publisher to avoid paying sales tax to freelance writers and photographers whose work is purchased by the magazine as material to be used in a future issue of the magazine?”

No, a magazine publisher may only issue a resale certificate to purchase property ex tax which the publisher will incorporate as an ingredient or component part of the product sold. A photograph does not become an ingredient or component part of a magazine merely because the image of the photograph is reproduced in the magazine. (Sales and Use Tax Reg. 1590, subd. (a)(3).) On the other hand, the transfer to a publisher of an original manuscript by the author for the purpose of publication is not subject to tax. The true object of such a contract is the performance of a service. (Sales and Use Tax Reg. 1501, Service Enterprises Generally.)

“10. Does a resale number enable a magazine publisher to avoid paying sales tax to freelance graphic artists whose work consists of refining the appearance of future issue of the magazine?”

No, tax applies to the retail sale of artwork by graphic artists to the publisher of a magazine. The artwork does not become an ingredient or component part of a magazine merely because an image of it is reproduced in the magazine.

“11. Does a resale number enable a magazine publisher to avoid paying sales tax to the printing company which prints the 30,000 copies of each monthly issue?”

Yes, the publisher may issue a resale certificate to the printing company in the form provided by Sales and Use Tax Regulation 1668, Resale Certificates.

“12. Will sales tax be due on advertising space sold by the magazine publisher to a business located in California?”

No, the sale of advertising space is not a sale of tangible personal property. Sales tax does not apply to the publisher's charge for advertising. (Bus. Tax. Law Guide Annot. 540.0020.)

“13. Will sales tax be due on advertising space sold by the magazine publisher to a business located outside of California?”

No, our answer is the same as in response to question 12, above.

“14. Which if any of the preceding 13 examples would be subject to a use tax?”

Use tax is imposed on the use of tangible personal property purchased from a retailer for use in this state. (Rev. & Tax. Code § 6201.) If you purchase a photograph or graphic art from an out-of-state retailer for use in publishing the magazine in California, the use tax is applicable.

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

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

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