



STATE BOARD OF EQUALIZATION

January 17, 1950

Gentlemen:

The legal staff has made a careful study of your file and petition for redetermination.

The facts upon which we base our conclusions are substantially as follows:

The stamps, books, catalogs and advertising media are purchased by you tax-free, either by being purchased under a resale certificate in this state or by being purchased out of state. This material is then distributed to the merchants, dealers or licensees to be used in carrying out the sales promotion and cash discount plan which you operate. Your plan is widely advertised and used and apparently increases the merchant's business if he subscribes to your plan. It appears that no specific charge is made for these materials. The actual stamps are then issued to the respective merchants or dealers at a cost of \$15 for each 5,000 stamps.

Realistically, the merchant is not bargaining for, nor paying for the value of the stamps as a tangible, that is, he is not interested in, nor is he actually paying except, incidentally, for the value of the physical property which takes up the stamps. In other words, the merchant is not purchasing the stamps for their tangible value as one would purchase blank sheets of paper to write on. The merchant is merely purchasing an intangible plan of benefit to both parties.

The stamps are issued to the merchant's customers at a determined ratio based on the amount of the sale. The customer may exchange the filled books for merchandise at the merchant's outlet or at one of the Redemption Centers. If the merchant redeems a filled book, then you reimburse him at the regular redemption rate.

Section 6094 of the California Revenue and Taxation Code provides that if a purchaser gives a resale certificate and thereafter makes any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the purchaser is subject to a use tax as of the time the property is first used by him and the sales price of the property to him shall be the measure of the tax.

As already stated, we are of the opinion that you are not selling the stamps, or the other items, as a tangible. Accordingly, it is our opinion that you make the last purchase of the stamps, stamp books, catalogs and advertising media for sales and use tax purposes. Inasmuch as the use of these items occurs in this state it is our opinion that your plan is subject to a use tax under Section 6094.

With respect to your purchases from out-of-state vendors, the use tax is again properly imposed. Section 6201 of the code imposes a use tax on the use, in this state, of tangible personal property purchased from a retailer for use in this state. While resale in the regular course of business would not be a taxable use, we have already indicated that it is our opinion that you are not

reselling these stamps and other items, but are merely consuming them in providing a sales promotion plan.

It is also to be noted that in the contract form headed by the word FRANCHISE, it is stated in Section 9 "Title to all stamps, saver books, catalogs, signs, and other forms of advertising shall be and remain with [you]". There is similar language in the other two contract forms furnished to this office.

Other language in the contract forms also indicate that you retain title to the property. For example, the merchant is required to return all stamps, books and other material if the services are no longer used.

Accordingly, it is our view that the tax has properly been determined. However, if you are of the opinion that our understanding of the facts is incorrect, we shall be happy to schedule the matter for a preliminary hearing before a hearing officer. If you feel our understanding of the facts is correct but that the law has not been properly applied, we shall schedule the matter for a board hearing. Kindly let us know of your wishes.

Very truly yours,

W. W. Mangels
Associate Tax Counsel

WWM

cc: Glendale - Auditing