



STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
Telephone: (916) 324-2637
FAX: (916) 323-3387

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First District, Hayward

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July 2, 1996

Ms. S--- L--- - M---
XXXXX --- St.
--- ---, California XXXXX

E. L. Sorensen, Jr.
Executive Director

Re: Sales of "Personal Pictures"

Dear Ms. L--- - M---:

This is in response to your letter dated June 6, 1996 regarding the application of tax on "personal picture" certificates which are redeemable for printed materials that contain a picture and text provided by your customers.

You state:

"I buy these certificates at a cost and then turn around and sell them to who[m]ever wants to buy them.... When the certificate is redeemed by the person who purchases ... [it], the customer, now owner of the certificate, takes it home, selects their picture, writes their own words, ... enclos[es] a check for \$5.95 for postage and handling, [and] sends [these items] ... to Texas[.] In 2-4 weeks, [the customer receives] ... their product [consisting of either] a set of trading cards, their business card with a picture on it, [a] calendar with a picture or a set of postcards."

You ask whether tax applies to your company's operations. For purposes of this opinion, we assume that the Texas company manufactures the certificates and transfers title to these certificates to you outside the state. (We will not therefore discuss whether California tax applies to the Texas company's sales or use of these certificates.)

Discussion

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property inside this state unless the sale is specifically exempted from taxation by statute. (Rev. & Tax. Code § 6051). Taxable gross receipts include all amounts received with

respect to the sale, with no deduction for the cost of materials, service, or other expense of the retailer passed on to the purchaser unless there is a specific statutory exclusion. (Rev. & Tax. Code § 6012(a)). When sales tax does not apply, use tax is imposed on the sales price of tangible personal property purchased from a retailer for the storage, use, or consumption of that property in California. (Rev. & Tax. Code §§ 6201, 6401). A retailer engaged in business inside this state is required to collect the applicable use tax from the purchaser at the time of sale of property to be used inside this state. (Rev. & Tax. Code § 6203.)

We understand that you collect a predetermined amount from your customers for “personalized” picture items and provide them with a certificate which they mail (along with a picture and text) to your supplier in Texas. Your supplier then ships a finished “personal picture” to your customer inside this state on your behalf. Under these facts, we regard you as the retailer of the personalized calendars, trading cards and post cards purchased by your customers. We assume that title to these items passes from the Texas company to you (and then from you to your customer) outside this state when the Texas company completes its responsibilities with respect to physical delivery of the property. (See Cal. U. Com. Code § 2401.) Since title to this property passes outside this state, your customers owe use tax measured by the purchase price of the property since they purchased the property for storage or use inside California. (Rev. & Tax. Code §§ 6201, 6401.) You are responsible to collect this tax from your customers and remit it to this Board since you are the retailer of these goods. (Rev. & Tax. Code § 6203.)

This letter supersedes and replaces our initial opinion regarding the application of tax on your operations as expressed to you during our telephone conversation in June, 1996. If you have any additional questions or information which may change our opinion, please write again.

Sincerely,

Warren L. Astleford
Tax Counsel

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cc: --- District Administrator - (--)