



STATE BOARD OF EQUALIZATION

April 26, 1971

REDACTED TEXT

Re: REDACTED TEXT

Dear Mr. REDACTED TEXT:

This is in response to your petition for redetermination of February 24, 1971, which was referred to the undersigned for an initial reply.

We understand a sales tax audit of REDACTED TEXT, for the period of October 1, 1967 to September 30, 1970, resulted in a determination for additional tax of \$708.65, plus interest of \$70.88. The total tax and interest of \$779.53 was paid under protest with REDACTED TEXT's petition.

The basis for REDACTED TEXT petition is that certain "packing list enclosed envelopes" sold by REDACTED TEXT were properly regarded by REDACTED TEXT as sales for resale and, therefore, the sales were not subject to tax. You believe that REDACTED TEXT's customers do not use or consume the envelopes such as to subject the sales of the envelopes to them to the tax. It is your position that the envelopes are similar to "Fragile" or "Handle With Care" stickers, which this Board has recognized may be sold under resale certificates if they are affixed to nonreturnable containers of property to be sold.

The San Francisco office of the Board forwarded to us a sample of the type of envelope sold by REDACTED TEXT. The envelope may be affixed directly on containers by means of adhesive on its reverse side. There is a slot on the top of the reverse side through which the packing list is inserted and the slot is sealed by affixation of the envelope to the container. The front of the envelope contains the wording "Packing List Enclosed" across the top and is transparent, so that by properly folding the packing list, the name and address of the consignee would be visible for shipping purposes.

The subject matter of REDACTED TEXT's petition is covered by Regulation 1589, Containers & Labels, copy enclosed. We understand that REDACTED TEXT is not contending that the envelopes are exempt containers. Such a contention would be incorrect since REDACTED TEXT customers do not sell the packing list which is placed

in the envelope, but are the consumers of the list. Therefore, we shall limit our remarks to the contention that the envelopes are exempt as “labels”.

Part (2)(b) of Regulation 1589 provides, in part:

“Tax does not apply to sales of labels or nameplates if:

* * *

“The purchaser affixes them to nonreturnable containers of property to be sold...Examples are sales of labels to be affixed to fruit boxes, cans, bottles and packing cases, to growers, packers, bottlers and others who place the contents in the containers.”

The word “label” is used in Regulation 1589 in the same sense it was used by the court in *Graham v. Justice’s Court*, 20 Cal.App.2d 328, 330, that is “ ‘Label’ is a mark or tag; an identification by inscription of the contents, ownership, etc.” We have taken the position that exempt labels include items attached to containers which identify the product or producer, describe the contents, or instruct on the application or use of the product. The essential function of such exempt labels is to convey information concerning the product placed in the container and sold.

In contrast to this informational function of an exempt label, the function of the envelopes in question is to enclose the packing list and, since the envelope is transparent, serve as a shipping tag by showing the name and address of the consignee. There is no information as to the contents of the container on the envelope. Any plain envelope, with the words “Packing List Enclosed” printed on it, could be affixed to the container and serve the same purpose.

Since at least 1951, our position in regard to packing lists and the envelopes in which they are enclosed has been as stated in California Tax Service, Supplement to Annotations 1641.10, “Packing list and envelope in which enclosed, sales to shipper taxable as they are consumed by him.”

REDACTED TEXT customers are the consumers of these envelopes, just as they would be if they enclosed the packing list in a normal envelop and sent it separately through the mails. REDACTED TEXT customers use a more practical method of delivering the packing list; namely, they purchase an envelope which is readily attachable to a container and which readily identifies the contents of the envelope as a packing list. The mere attaching of the envelope to the container no more changes the nature of the envelope to a label than would the attachment of a shipping tag or price tag change their nature to that of a label.

The “Fragile” or “Handle With Care” stickers which you discussed with the Board’s auditor are distinguishable from envelopes. The only purpose of such stickers is to convey information as to a quality of the product in the carton; i.e., it is breakable. In

contrast, your customers use the envelopes to carry a packing list to the purchaser and possibly to act as an enclosure for a packing list that acts as a shipping tag.

In light of the above, our recommendation will be that the sales of packing list envelopes were properly disallowed as sales for resale in the Board's audit.

Your petition requests an informal hearing with a hearing officer at the San Francisco office, if possible. If, after review of our recommendation and the reasons therefore, you still wish a hearing, please notify Mr. J. L. Martin, Petition Unit, P.O. Box 1799, Sacramento, California 95808, within thirty days. Otherwise our recommendation will be presented to the Board for final action of which you will be notified.

Very truly yours,

Donald J. Hennessy
Legal Counsel

DJH:lt
Enclosure

Bc: San Francisco – Dist. Admin.