

**STATE BOARD OF EQUALIZATION**
(916) 445-8900

June 15, 1982

Mr. A--- M. G---
P---, C--- & G---

----, CA XXXXX

Dear Mr. G---:

RE: G--- P---, Inc.
SR -- XX-XXXXXX

Your letter of May 14, 1982 requests advice on the application of sales or use tax to the following factual situation:

"A California business orders a number of advertising circulars to be printed by an out-of-state printer, the written purchase order provides that title will pass to the California business at the location of the out-of-state printer at the time the printing order is completed.

"The order is communicated by United States Mail or by telephone to the out-of-state printer. Follow-up on the printing order is done by telephone, mail, and by contacts between the out-of-state printer and through its agents or representatives in the State of California. The contact in the State of California is for the purpose of obtaining the advertising copy that will be used by the out-of-state printer in printing the circulars. Some of such copy might consist of paste-ups, type-setting or other preparation done in the State of California by the agent of the out-of-state printer.

"The California business will never take delivery of all the advertising circulars. The circulars will be mailed to potential customers of the California or they will be delivered to common carriers for delivery to stores as store copies and to publications that may be located in the State of California for inserting in such publications. The copies to be delivered as store copies will be a small residue of less than one percent of the total printing.

"Both the mailing of the circulars to any California residents and the delivery of the circulars to carrier or Post Office will be completed outside of the State of California. The source of the mailing list may be from a computer tape prepared by the California agent of the out-of-state printer.

Based on these facts, particularly the fact that the California purchaser included an explicit provision in its purchase order that title to the printed advertising circulars would pass to the purchaser at the out-of-state printer's location when the printing order was completed, we agree with your conclusion that the transaction would not be subject to sales tax because the sale took place outside California. This conclusion is supported by Regulation 1620(a)(1), as you note.

As further explained in Regulation 1620(b), however, use tax applies with respect to any property purchased for storage, use, or other consumption and stored, used, or consumed in this state. For this reason, we believe that the circulars shipped to the customer's California stores for use as store copies would be subject to use tax. We assume that the circulars shipped to publications would be inserted into newspapers or periodicals which are exempt under Revenue and Taxation Code Section 6362. Such circulars would also enjoy that exemption under Regulation 1590(a)(3) and would not be subject to use tax. Circulars mailed by the out-of-state printer to addresses in California would also not be subject to use tax because we regard the mailing as an out-of-state use. Thus, only the charges allocable to the store copies would be subject to use tax.

While liability for use tax falls on the purchaser, the out-of-state printer is required to collect the tax and pay it to the Board. (Revenue and Taxation Code Sections 6202, 6203 and 6204.) The printer has an agent here and would be considered a "retailer engaged in business in this state" as that term is defined in Section 6203. Since the use tax required to be collected is a debt owed by the retailer to the state, the printer will incur a tax liability under the described facts for the store copies.

Very truly yours,

Richard Ochsner
Tax Counsel

RHO:sw