

**STATE BOARD OF EQUALIZATION**

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November 21, 1991

Mr. A--- S. W---
XXX --- --- Avenue
---, NJ XXXXX

Dear Mr. W---:

This is reply to your August 29, 1991 letter regarding the application of sales and use tax to sales by your client under the cases you described as follows:

“Case I

- A) A printer/mailer produces and mails in Pennsylvania direct mail promotional material pieces for Customer A based on Customer A’s mailing list at no cost to the ultimate recipients. Printer/mailer and Customer A both have nexus in your state. Does the printer/mailer have to charge Customer A tax on the pieces mailed to recipients within your state?
- B) Same facts as above except:
Customer A does not have Nexus in your state but printer/mailer does. Does the printer/mailer have to charge Customer A tax on the pieces mailed to recipients within your state?

Revenue and Taxation Code section 6201 imposes the California use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. Under the facts of this case, the printer places the promotional material in the mail outside California. We have taken the position that the depositing of promotional material in the mail out-of-state passes title at that time. Therefore, under the facts you provide here, the use of the property by Customer A occurs outside the state, and the California use tax does not apply to the use.

“Case II

- A) A printer produces catalog insert pieces in Pennsylvania for Customer A and drop ships them via common carrier to a bindery/mailing house in your state contracted by Customer A. Printer has Nexus in your state. The printed pieces will be incorporated into a catalog by the bindery/mailing house and will be mailed based on Customer A’s mailing list at no cost to the ultimate recipients. Some pieces will be mailed to recipients within your state; other pieces will be mailed to recipients out of your state.

Customer A has Nexus in your state. Does the printer have to charge Customer A tax on the entire drop shipment in your state? Does the printer have to charge Customer A tax only on the pieces which will be mailed to recipients within your state?

- B) Same facts as above except:
Customer A does not have Nexus in your state but printer does. Does the printer have to charge Customer A tax on the entire drop shipment in your state? Does the printer have to charge Customer A tax only on the pieces which will be mailed to recipients within your state?”

Under the facts of this case, Customer A makes the use of the catalog insert pieces in this state by sending the printed materials to the recipients from this state. Use tax applies to such use of the property including the materials which are shipped outside California by Customer A or Customer A’s agent. Such is the case whether or not Customer A is engaged in business in this state or whether or not Customer A has any other nexus within this state.

However, we are sending a copy of Sales and Use Tax Regulation 1541.5, Printed Sales Messages, which provides an exemption from sales and use tax for the sale or use of printed sales messages which are:

- (1) Printed to the special order of the purchaser;
- (2) Mailed or delivered by the seller, the seller’s agent or a mailing house acting as the agent for the purchaser, through the United States Postal Service or by common carrier;
- (3) Received by any other person at no cost to that person who becomes the owner of the printed material.

We suggest that you review the regulation to determine whether the printed materials qualify as printed sales messages as defined.

“Case III

- A) A printer/ mailer produces in Pennsylvania direct mail promotional material pieces for Customer A and ships the pieces via common carrier to a post office in your state for mailing to recipients both within your state and out of your state at no cost to the ultimate recipients. Printer/MAILER has Nexus in your state. Customer A has Nexus in your state. Does the printer/MAILER have to charge Customer A tax on all the pieces mailed from your state? Does the printer/MAILER have to charge Customer A tax only on the pieces mailed to recipients within your state?
- B) Same facts as above except:
Customer A does not have Nexus in your state but printer/MAILER does. Does the printer/MAILER have to charge Customer A tax on all the pieces mailed from your state? Does the printer/MAILER have to charge Customer A tax only on the pieces mailed to recipients within your state?”

Our answer is the same as in response to Case II.

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

RLD:sr