

**STATE BOARD OF EQUALIZATION**

(916) 445-6493

November 21, 1985

Ms. S--- M---
B--- R--- E---
P. O. Box XXXX
---, CA XXXXX-XXXX

Re: B--- R--- E--- – [no account number]
Inserts in periodicals – vinyl bags,
Posters, and records

Dear Ms. M---:

In your September 20, 1985 letter to the Board's --- --- Office, which was referred to the legal staff for response, you write:

There has been some confusion regarding the definition of advertising components inserted into my periodical or newspaper according to your Regulation 1590. I would appreciate your ruling on the matter.

The newspaper/periodical carries advertising which from time to time takes the form of poster inserts, record inserts, bag inserts (see attached) which are included as part of the magazine and distributed with it as a component part. The occasions are rare for these inserts, but according to item (3) of Regulation 1590 "Handbills, circulars, flyers, order forms, reply envelopes, maps or the like are considered as component parts of a newspaper or periodical when attached to or inserted in and distributed with the newspaper or periodical."

The advertising in question fits this ruling according to my understanding. Please advise in writing as to your ruling.

We received from the --- --- Office of the Board, two copies of the periodical "B--- R--- E---", together with a vinyl carry bag imprinted with the logo of Q--- R---.

Opinion

Our opinion is that the vinyl bags and records which you deliver to the periodical's subscribers are taxable as premiums, and are not exempt as ingredient or component parts of the periodical. However, it is also our opinion that posters inserted in and delivered with the periodical are exempt as ingredient or component parts of the periodical. Our reasons for these conclusions are as follows:

Revenue and Taxation Code Section 6362 exempts from sales and use tax newspapers and periodicals published with the requisite frequency, together with tangible personal property which becomes an ingredient or component part of the newspaper or periodical. There is no question here that "B--- R--- E---" qualifies as an exempt periodical under Section 6362. In Sales and Use Tax Regulation 1590(a)(3), the Board has interpreted the term "ingredient or component part of a newspaper or periodical" to include only those items that become physically incorporated into the publication, and not those which are merely consumed or used in the production of the publication. As you point out, the regulation provides that for example, handbills, circulars, flyers, order forms, reply envelopes, maps or the like are considered as component parts of a periodical when they are attached to or inserted and distributed with the periodical. All of these examples constitute ingredient or component parts of a printed periodical because they are also printed matter, and are printed on paper products. We consider that the posters which you from time to time insert in the periodical would likewise qualify under Regulation 1590(a)(3) as an ingredient or component part of the periodical.

However, we cannot agree with your contention that tangible personal property such as vinyl bags and records, or any similar items which are not printed matter, constitute ingredient or component parts of the periodical, even if these items are in some manner physically attached to the periodical. For example, the Board's legal staff has previously issued an opinion, Business Taxes Law Guide Annotation 385.0590 which states:

Tapes and cassette recordings of musical selections which are complete in themselves are not exempt as periodicals even though sold on a subscription basis and distributed with a periodical issued at regular intervals. 7/22/76.

Rather, we consider that these vinyl bags and records constitute taxable tangible personal property delivered as premiums together with the periodical. Regulation 1670(d) provides that when a person delivers tangible personal property as a premium together with other merchandise sold, and the obtaining of the premium by the purchaser is certain and not dependent upon chance or skill, the transaction is a sale of both articles. Tax applies to the gross receipts received from the purchaser for both the goods and the premium, except when the premium is delivered along with an exempt item, such as an exempt periodical.

In this latter case, tax applies to the gross receipts from the sale of the premium, which will be regarded as the cost of the premium to the retailer in the absence of any evidence that the retailer is receiving a larger sum.

Our view is that Regulation 1670(d) applies to this situation, and tax applies to your sales of the vinyl bags and records, but not the posters, measured by your costs for the vinyl bags and records.

I enclose a copy of Regulation 1590 and 1670 for your information. Please feel free to contact me if you have any further questions or comments about this letter.

Very truly yours,

John Abbott
Tax Counsel

JA:ss

Encl.