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**STATE BOARD OF EQUALIZATION**

May 27, 1952

Attention Mr. X-----,

Gentlemen:

This in reply to your inquiry concerning the application of sales tax to the activities of X----- . We regret this tardy reply but we apparently mislaid your letter. As we understand the facts this corporation sells packaging materials and labels to distributors of "Northwester" brand chicken-pheasant. Those materials are sold at cost plus a 1 cent override on each chicken-pheasant packaged. The 1 cent override is placed in a fund which is used primarily for advertising. It distributes some advertising material to the "Norwester" processors and distributors without additional charge.

It is our opinion that, for sales tax purposes, the corporation should be regarded as selling the packaging material and labels and consuming the advertising pamphlets. Pursuant to Sales and Use Tax Ruling 79, copy enclosed, persons engaged in the business of selling tangible personal property of a kind normally subject to the sales tax are required to hold a seller's permit even though substantially all or all of their sales are otherwise exempt as a result of Ruling 49, copy enclosed. Sales of nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container are exempt pursuant to Ruling 49. Also as shown by that ruling, the tax does not apply to sales of labels if the purchaser affixes them to property to be sold and sells them along with such property. Accordingly, if your client only makes such exempt sales he is required to hold a seller's permit and include such sales on Line 1 of his sales and use tax return but may deduct such sales on Line 11 of the return.

As we understand the facts, the containers, other packaging material and labels are being sold at cost plus the 1 cent override. Inasmuch as your client is apparently selling these items he may purchase them ex tax by providing his vendor with resale certificates under the conditions and pursuant to the provisions of Ruling 68, copy enclosed.

Inasmuch as it appears that your client is not, in effect, reselling but is consuming advertising display material and other advertising matter, your client should purchase such material on a tax-paid basis, sales to him being at retail.

We enclose an application for a seller's permit and a sample copy of a sales and use tax return. When completed, the application should be submitted to our Sacramento office, Room 148, 1020 N street.

If you have any further questions we shall be happy to endeavor to answer them and we assure you that we shall answer more promptly.

Very truly yours,

W.W. Mangels  
Assistant Counsel

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