



---

**STATE BOARD OF EQUALIZATION**

916-445-5550

March 12, 1987

Dear X-----:

This is in response to your letter dated January 8, 1987 regarding the application of sales tax to sales of stamps and stamped envelopes. This is not an opinion upon which your client may rely pursuant to Revenue and Taxation Code section 6596 because you have not identified your client. If you want such an opinion, please write us again, identifying your client and providing us with any other relevant information.

Your client will be selling at retail stamps and stamped envelopes over the counter and through vending machines. The stamps may be contained in folders or wrappers. The stamped envelopes will be either postage imprinted envelopes your client purchases from the United States Postal Service or envelopes purchased from private vendors upon which stamps are attached. I assume that all stamps and stamped envelopes are sold for purposes of postage and not for purposes of stamp collection.

Stamps

Sales tax is imposed on a retailer's gross receipts from the retail sale in this state of all tangible personal property unless the sale is specifically excluded or exempted from taxation by statute. (Rev. & Tax. Code § 6051.) On the other hand, no tax is imposed on the charge for performance of a service, even if some tangible personal property is incidentally transferred. (Reg. 1501.)

When a person purchases stamps for purposes of postage and not for purposes of collecting those stamps, that person's true object is to obtain the performance of postal service. The tangible personal property transferred, stamps, serve as indicia to the Postal Service that the postal fee has been paid. Therefore, charges received for the sale of U. S. Postal Service stamps purchased for purposes of postage are not subject to sales tax. (Id.)

The folders or wrappers containing the stamps are "containers" under Revenue and Taxation Code section 6364. (Reg. 1589(a).) When containers holding only contents whose sales price is not subject to tax are sold with those contents, the charge for the container is also not subject to tax. (Rev. & Tax. Code § 6364(b).) Since the sale at

postage stamps for postage is not subject to tax, neither is the sale of containers holding only those stamps.

### Envelopes

Envelopes are tangible personal property the retail sales of which are subject to sales tax. Except as provided below, the total amounts your client receives for his sale of stamped envelopes at retail are subject to sales tax. (Rev. & Tax. Code §§ 6012, 6051.) Since the envelopes will be purchased for resale, your client may purchase them ex tax by issuing a resale certificate to his vendor. (Reg. 1668.)

As mentioned above, postage stamps are indicia of payment for postal service. The face value of these postal charges, whether in the form of stamps attached to envelopes or postage imprinted on envelopes by the postal Service, may be subtracted from your client's taxable gross receipts.

Since your client may compare the tax treatment of his sales of stamped envelopes to the tax treatment of sales by the Postal Service, to avoid any confusion I will also discuss taxation of sales by the Postal Service. Sales made by the United States or its unincorporated instrumentalities are exempt from sales tax. (Rev. & Tax. Code § 6381(a).) The United States Postal Service is an unincorporated instrumentality of the United States. (Business Taxes Law Guide Anno. 505.0305 (4/23/71).) Therefore, retail sales made by the postal Service are not subject to sales tax. This means that even if your client sells the same taxable item as the Postal Service (e.g., stamped envelopes) at the same price, the sale by the Postal Service is not subject to sales tax despite the fact that the sale by your client is subject to sales tax.

### Vending Machines

Sales tax applies to sales through vending machines of stamps and stamped envelopes in the same manner as discussed above. The proper manner in which sales tax liability for sales through vending machines must be reported is explained in Regulation 1574, a copy of which is enclosed. One requirement is that a statement including the name, address, and seller's permit number of the machine's operator be affixed on each machine dispensing tangible personal property of a kind the gross receipts from retail sales are subject to tax, such as stamped envelopes. (Reg. 1574(a)(1).)

Please note that sales of stamped envelopes will be regarded as having been made on a tax-included basis only if a statement in substantially the following form is affixed to the machine: "All prices of taxable items include sales tax reimbursement computed to the nearest mill." (Reg. 1574(8)(1).) So, for example, if a machine on which the foregoing statement is affixed takes in \$100.00 in taxable receipts, the sales tax liability at the rate of 6.5% would be \$6.10. If the statement is not affixed on the machine, the sales tax liability would be \$6.50.

### Conclusion

The sale of stamps for purposes of postage is not subject to tax. This Includes any nonreturnable container holding those stamps. The sale of stamped envelopes is Subject to sales tax, with a deduction from taxable gross receipts only ~or the face value of the postage.

Since some of your client's sales will be subject to tax, you ask why two companies making similar sales are not collecting tax. X----- holds seller's permit number X----- and is subject to the California Sales and Use Tax Law, including the rules and regulations discussed above. We do not have a record of a X----- having applied for a seller's permit. If you will send us its address (and please check to make sure the name you have provided us is correct), we will be happy to investigate further.

I note that you ask why these two companies are not collecting tax. The sales tax is imposed on the retailer. (Rev. , Tax. Code § 6051.) Whether the retailer collects sales tax reimbursement from his customer is solely a matter of contract between the retailer and customer. (Civil Code § 1651.1.) If your client's competitors sell through vending machines, the measure of their tax is determined, in part, by whether they have attached to their machines the statement referred to above. You may wish to look at their machines to determine whether they are collecting sales tax reimbursement from their customers (if the statement is not attached, they are not collecting reimbursement).

If you have further questions, feel free to write again.

Sincerely,

David R. Levine  
Tax Counsel

DHL:sr  
Enc.