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**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
(916) 324-3828

October 3, 1990

REDACTED TEXT

RE: REDACTED TEXT

Dear REDACTED TEXT:

Your letter of July 31, 1990, to the Legal Department, has been referred to me for response. You have requested a ruling as to any sales tax liability arising from your company's sales to out-of-town customers.

I. FACTUAL BACKGROUND

In your letter you set for the factual background of your problem as follows:

"Our company sells direct mail advertising to automotive dealers in California and throughout the United States.

"Our mailings of letters are custom printed for the purchaser and are received by the recipient at no cost to them.

"My question is about our out-of-town customers. We ship their mailings to one of their employees, addressed, stamped and sealed, for mailing to their post office (so it will bear their local postmark and not that of Los Angeles). This method of delivery is not covered in the regulation, and we would like a ruling as to the necessity of collecting sales tax from these out-of-town customers."

## II. OPINION

### A. Sales and Use Tax Generally

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise stated, all statutory references are to the Revenue and Taxation Code.) “[I]t shall be presumed that all gross receipts are subject to tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale ...” (§ 6091.) The retailer owes the sales tax, but it may collect sales tax reimbursement from the purchaser pursuant to agreement. (Civ. Code § 1656.1.)

### B. Tax Treatment of Printed Sales Messages

Section 6379.5 and 18 California Administrative Code Section (hereinafter “Regulation” or “Reg.”) 1541.5 provide an exemption from sales and use tax for the sale, storage, use or other consumption in this state of catalogues, letters, circulars, brochures, and pamphlets consisting substantially of printed sales messages for goods and services. The qualify for the exemption, the printed sales messages must be:

1. Printed to the special order of the purchaser for the principal purpose of advertising or promoting goods or services.
2. Mailed or delivered by the seller of the printed material, the seller’s agent or a mailing house acting as an agent for the purchaser, through the United States Postal Service or by common carrier.
3. Received by any person other than the purchaser or purchaser’s agent at no cost to that person who becomes the owner of the printed material.

“Exemptions from taxation must be found in the statute.” (Market St. Ry. Co. v. Cal. St. Bd. of Equal. (1955) 137 Cal.App.2d 87, 96 (290 P.2d 201.) Statutes granting exemptions are strictly construed against the taxpayer. The taxpayer has the burden of showing that he clearly comes within the exemption. Standard Oil Co. v. State Bd. of Equalization (1974) 39 Cal.App.3d 765, 769 [114 Cal.Rptr. 571].)

### C. Sales in Interstate Commerce

There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property which, pursuant to the sales contract, is required to be shipped and is shipped to a point outside this state by the retailer by means of (1) facilities operated by the retailer; or (2) delivery by the retailer to a carrier, customs broker, or forwarding agent, whether hired by the purchaser or not, for shipment to such out-of-state point. (§ 6369; Reg. 1620(a)(3)(B).)

The United States Postal Service is an agency of the federal government authorized and operated under 39 U.S.C. Sections 101ff. Items deposited in the mail are within the legal custody of officers or agents of the United States, and, while it so continues, the laws of the United States operate upon the mails to the exclusion of state laws. U.S. v. Eddy (D. 111.1858) 1 Biss. 227, 25 Fed. Cas. No. 15, 024.) It is a crime for anyone to unlawfully obtain mail. (18 U.S.C. §§ 1708, 2114.)

D. Tax Consequences to REDACTED TEXT

Your company sells custom-printed advertising and mails or delivers it. However, the recipients are the purchasers themselves. Since the advertising is delivered to the purchasers, we conclude that the exemption provided in Section 6379.5 is not available. This method of delivery is covered by the regulation. Regulation 1541.5(d)(6) lists the example of a department store which contracts with a printer to prepare sale catalogues. The printer delivers the catalogues through the U. S. Postal Service to the store where they are available to the store's customers at no charge. "Tax applies to the charges made by the printer since delivery was made to the purchaser." REDACTED TEXT, therefore is liable to report these sales and pay sales tax, unless otherwise exempted, and may collect sales tax reimbursement from the purchasers.

We believe, however, that there is another basis upon which at least some of your company's sales may be exempted from sales or use tax. Your letter indicates that your company makes sales to customers outside California. Sales of advertising material to out-of-state customers may be eligible for the interstate commerce exemption. (II Bus. Tax. L. Guide, Annot. 325.0240.)

You do not elaborate on how your company "ships" the advertising materials out of state. To qualify for the interstate commerce exemption, the company must either use its own transportation facilities or, pursuant to the sales contract, use the shipping services of a carrier, forwarding agent or customs broker. Delivery to a mailing agency qualifies (II Bus. Tax. L. Guide, Annot. 325.1560) as does delivery to an express office. (II. Bus. Tax. L. Guide, Annot. 325.0460.)

Although the legal staff has considered the question of what kind of carrier qualifies for this exemption many times before, there appears to be no published authority regarding mailing. Pursuant to the U. S. Code, mail, once deposited, passes out of the control of the mailer and into the custody of postal service employees for the benefit of the intended recipient. We thus conclude that when REDACTED TEXT consigns the packages of sales messages to the mails addressed to its out-of-state purchasers, it qualifies as a shipment out of state for the purpose of the interstate commerce exemption. This conclusion is supported by the fact that mailing is listed as a qualifying method of delivery in other contexts. (See, e.g., Reg. 1541.5(b)(2); Reg. 1628(a) – exemption for transportation charges.) Thus, although your company's sales of printed sales messages are not generally exempt from sales tax, since they are mailed to the purchasers, the sales of such messages to out-of-state purchasers are exempt when the packages, pursuant to the sales contract, are required to be shipped and are shipped to the out-of-state purchasers by your company's own facilities or delivery to a carrier, customs broker, or forwarding agent, including the mails.

I hope the above discussion as answered your questions. I have enclosed a copy of Board of Equalization Pamphlet No. 37, "Tax Tips for Advertising Agencies," for your information. If you need anything further, please do not hesitate to write again.

Very truly yours,

John L. Waid  
Tax Counsel

JLW:sr

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