

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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May 31, 1991

Re: --

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Dear --:

This is in response to your letter of January 17, 1991, requesting our opinion as to whether the above-referenced newsletter is exempt from sales and use tax.

Facts

You described the facts as follows:

“We deliver the newsletter to a 3rd party (mailing house) and they then send it out to an existing data base file.

“The newsletter promotes the station’s events, disc jockeys and prizes one can win by becoming a loyal listener. The newsletter contains a response mechanism to enable one to become a loyal listener. The station has a dollar value for every loyal listener it obtains.”

Sales and Use Tax - General Discussion

Except to the extent specifically excluded or exempted by statute, the Sales and Use Tax Law, California Revenue and Taxation Code (Section 6001 et seq.) imposes sales or use tax on the gross receipts from the retail sale of all tangible personal property sold or purchased for use in this state. (Sections 6051 and 6201). (All statutory citations are to the California Revenue and Taxation Code, unless otherwise noted herein.)

Printed Sales Messages

Section 6379.5 provides:

Printed sales messages for goods and services printed to the special order of the purchaser. There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of catalogs,

letters, circulars, brochures, and pamphlets consisting substantially of printed sales messages for goods and services printed to the special order of the purchaser and 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 to any other person at no cost to that person who becomes the owner thereof.

Additionally, Sales and Use Tax Regulation 1541.5(b) provides in relevant part:

(b) APPLICATION OF TAX. Operative January 1, 1987, tax does not apply to 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 assume that the recipients of the newsletter receive them free of charge. If so, then it is our opinion that the --- newsletter qualifies as a printed sales message under the foregoing statute and regulation. Your sales are therefore exempt from sales and use tax when you deliver them to a mailing house for mailing to the radio station's data base of recipients. A copy of the entire regulation is enclosed for your convenience. Please note that it describes the supporting documentation which is required in order to claim this exemption.

If you have any further questions, please do not hesitate to write to us again.

Cordially,

Victoria Lani Arena
Tax Counsel

NOTES:

This annotation is wholly lacking in the analysis necessary to reach its conclusion, although the conclusion is probably correct. Looking only at the statute, these don't seem to qualify because they don't appear to be for the sale of services (i.e., for the sale of listening to the radio.) However Reg. 1541.5(a)(1) defines printed sales messages to include advertising or promoting goods and services. While the examples are for the sale of goods and services, the wording at least arguably supports this conclusion since the newsletters "promote" the station's services, even if not promoting the sale of the service. This letter should have included more analysis. Now it does.