

and 170.0034.310
515.0012.840
STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
Telephone (916) 445-6450
Fax No. (916) 323-3387



MEMBER
First District

BRAD SHERMAN
cond District, Los Angeles

EST J. DRONENBURG, JR.
Third District, San Diego

MATTHEW K. FONG
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

BURTON W. OLIVER
Executive Director

January 18, 1995

Dear [REDACTED]

This is in reply to your November 16, 1994 letter regarding the application of California sales and use tax to charges by [REDACTED] is an advertising firm which offers alternative advertising for various clients by placing the clients' postcards strategically in [REDACTED] restaurants and night spots.

"BACKGROUND"

[REDACTED] solicits various companies that wish to advertise in the [REDACTED] area. The owners of [REDACTED] have had extensive advertising experience and have connections in the industry. Typical companies that would advertise with [REDACTED] are, [REDACTED].

"OPERATIONS"

The basic service that [REDACTED] delivers is the presentation of their client's advertising in the form of postcards not to be used for resale purposes in various [REDACTED] restaurants. [REDACTED] has approached approximately 90 restaurants and asked them if they would be willing to have a postcard rack (photo enclosed) placed in their location. If the restaurant agrees, a rack is installed by [REDACTED]. In return, the restaurant gets their own postcard printed free of charge to be placed in one slot in their rack. [REDACTED] will design the restaurant's postcard.

January 18, 1995

"Each rack can hold 24 postcards, thus with the restaurant taking 1 for themselves, there are 23 remaining for [REDACTED] to fill with their client's postcards."

"ADVERTISING SERVICE DELIVERED

The benefit to the Client is that they receive repeated exposure in 90 locations in [REDACTED] for patron's waiting to be seated, at the bar, or on their way out. Postcards are free of charge to patrons. The postcards are not to be sold but simply used to further enhance their client's message and image. In effect, title to postcards remains with the client/advertiser.

"Each client is guaranteed 1 slot in all 90 restaurants.

"PRINTING & MONTHLY SERVICING

[REDACTED] is usually not responsible for designing postcards as most clients already have their own logos. [REDACTED] has these logos printed into finished postcards by an outside vendor (out of state). Finished cards are then shipped from the printer to [REDACTED]. [REDACTED] then places them and refills racks during the month in their 90 restaurants.

"SALES & BILLING

Clients are billed monthly for the aforementioned advertising."

Since you state no facts indicating that [REDACTED] sells the postcards to its clients, we assume that, where you state that "title to postcards remains with the client/advertiser," you mean that title remains with [REDACTED].

You conclude that, under the transactions, [REDACTED] provides advertising services to its clients, and sales tax does not apply to [REDACTED]'s charges to its customers for placing the postcards in the California locations. We agree with your conclusion provided our assumption is correct that there are no facts showing [REDACTED] sells the postcards to its clients. If our assumption is correct, [REDACTED] provides an advertising service to its clients and places its own postcards in the restaurants for the restaurant patrons to take free of charge.

Revenue and Taxation Code section 6201 imposes a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. The law defines "use" to be any

January 18, 1995

exercise of any right or power over tangible personal property incident to the ownership of the property except for the sale of the property in the regular course of business.

When [REDACTED] places its postcards in a restaurant in California for persons to take for no charge, [REDACTED] thereby makes a "use" of the postcards in this state. Also, when [REDACTED] places racks in restaurants to hold those postcards, [REDACTED] makes a use of the racks in this state. Accordingly, when [REDACTED] purchases postcards and racks from an out-of-state retailer for use in this state and uses the tangible personal property in this state, [REDACTED] is responsible for reporting and paying use tax on the use of that property measured by the sales price of the property to [REDACTED]

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,



Ronald L. Dick
Senior Tax Counsel

RLD:sr