

**STATE BOARD OF EQUALIZATION**

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April 21, 1982

Mr. R--- M. C---, Esq.
--- and ---, Inc.
P.O. Box XXX
---, CA XXXXX

Dear Mr. C---:

This responds to your letter of March 2, 1982 to Mr. Gary J. Jugum, which asks for the application of tax in three aspects relating to the following facts:

A [out of state] corporation, whose only place of business is in that state, will publish a catalog which advertises the merchandise of various vendors throughout the United States. The corporation will distribute the catalog to its clients – retailers throughout the United States – who will have for sale to their customers the merchandise described in the catalog. The retailers will reimburse the [out of state] corporation for the publication costs of the catalogs and will distribute the catalogs to customers of the retailers.

Your questions are as follows:

A. Will California impose any sales or use tax upon the California retailers by reason of their purchase of the catalogs?

Answer: Sales tax does not apply to the sale by the out-of-state publisher to the California retailer. It is not a sale by a retailer in this state (Revenue and Taxation Code Section 6051).

Use tax does apply to the use or other consumption of property purchased for use in California (Section 6201). Purchase of the catalogs for distribution to customers without charge constitutes a taxable use.

B. Is there any such tax imposed upon the transaction of a California retailer giving free such a catalog to a customer?

Answer: A retailer who makes a gift of property to customers is the consumer of the property, and the tax applies with respect to the sale of the property to such persons (Regulation 1670(a)). Since the sales tax did not apply to the sale to the retailer, the use tax is applicable (Section 6401), payable by the retailer, unless he paid tax to the [out of state] corporation as a retailer under the conditions specified in Section 6202. (See BTLG 280.0020.)

C. Is there any such tax if a charge is made by the retailer to its customers for the catalog, if an agreed deduction, in the amount of the charge, is made against the first purchase from the retailer by the purchaser of the catalog?

Answer: This encompasses two situations: (1) a customer asks for a catalog, makes no purchase, and is charged for the catalog. A deduction is given at a later time if a purchase is made; (2) the customer receives the catalog at the same time as it makes a purchase, and receives the deduction.

In (1) the transfer of the catalog for a consideration is a sale of tangible personal property. The charge for the catalog is included in the retailer's gross receipts at the time of the transfer of the catalog. Later, when the customer purchases merchandise and is given a discount measured by the price he paid for the catalog, that discount will be considered to be an adjustment to the price of the merchandise and may be excluded from the sales price of the merchandise.

In (2) two items are sold at the time of the transaction: the merchandise and the catalog. Tax applies as set forth in Regulation 1670(d), copy enclosed for your ready reference. Thus, the net result is the same in (1) and (2).

If further information is required, please write the undersigned.

Very truly yours,

M. H. Howard
Tax Counsel

MHH:ba
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