

**STATE BOARD OF EQUALIZATION**

LEGAL DIVISION - MIC 82
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
Telephone No.: (916) 324-2655
Facsimile No.: (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

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

BRAD SHERMAN
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

BURTON W. OLIVER
Executive Director

August 18, 1995

A--- M---
Senior Tax Analyst
K--- P--- M--- C--- Program
Financial Administration
P.O. Box XXXXX
---, CA XXXXX-XXXX

Re: Sales and Use Tax Regulation 1541.5

Dear Mr. M---:

This is in response to your letter of March 30, 1995. You ask for a second opinion in regard to the application of the printed sales message exemption to K--- P---'s (K---) distribution of the "K--- P--- H--- Handbook".

You made a similar inquiry in October, 1994, and an answer was mailed to you on November 18, 1994. That answer states that the sale or use of the handbook does not qualify for the exemption provided in Sales and Use Tax Regulation 1541.5 for the sale and use of certain printed sales messages. The handbook does not meet the requirement that its principal purpose was to advertise or promote the sale of goods and services. In your latest letter, you ask us to consider the following additional facts:

"The handbooks were printed out of state, and the printer shipped the handbooks from the printer's out-of-state location by common carrier to Postal centers in Northern California. The Postal Service delivered the handbooks directly to the members in Northern California. There was no charge to the member for the handbooks.

"Also, separately, the out-of-state printer shipped copies of the handbook from the printer's out-of-state location directly to K--- locations in Northern California.

"It is K--- F--- H--- Plan, Inc's opinion that handbooks that were shipped directly from the out-of-state printer via common carrier and Postal Service directly to the members without any charge whatsoever to the members are exempt from California use tax, and the handbooks that were shipped from the out-of-state printer directly to K--- locations in Northern California are subject to use tax."

California imposes the use tax on the storage, use or other consumption in this state of tangible personal property purchased from a retailer for use in this state. (Rev. and Tax. Code § 6201.) Persons who make gifts of property to others are the consumers of the property, and sales or use tax applies to the sale of the property to or the use of the property by such persons. (Sales and Use Tax Regulation 1670(a).) A gift that is deposited in the mail out-of-state is completed at that time, and the donor is not obligated for California use tax. (Sales and Use Tax Annotation 280.0360, 7/18/50.) Use tax does not apply with respect to the use of catalogues which are addressed and mailed to persons outside of California when the catalogues are forwarded to an agent in California for forwarding to the pre-addressed destination provided the catalogues remain in the stream of interstate commerce and their delivery is not interrupted for any purpose unrelated to the journey. (Sales and Use tax Annotation 570.1110, 11/28/66.)

The question here is whether or not K--- makes a taxable use in this state of the handbooks it sends to its members in California free of charge. I assume that the handbooks are pre-addressed and postage paid when they come to the Northern California Postal facility. The gift of the handbooks takes place outside the state when the printer delivers them to the common carrier for shipment directly to the recipient in view of the fact that their journey is not interrupted for any purpose unrelated to their delivery to K---'s members. Thus, there is no use of the handbooks made by K--- in California to which tax applies.

We agree with your conclusion that use tax applies to the sales price to K--- of the handbooks the printer ships to K--- locations in this state.

We hope this answers your questions; however, if you need further information, please do not hesitate to write again.

Sincerely,

Anthony I. Picciano
Staff Counsel

AIP:es

cc: Oakland District Administrator (CH)