



STATE BOARD OF EQUALIZATION

December 22, 1953

Gentlemen:

You are a wholesale distributing company and purchase, along with your regular cosmetic items, samples of these same products. Some of the samples are used in California, but most are sent to your studios out of state for the purpose of being given away or used in demonstrating the products.

The California sales tax applies to retail sales of tangible personal property in this State and is legally imposed upon the retailer. As indicated in Sales and Use Tax Ruling 72 (copy enclosed), you are the consumer of the samples and the sale of the samples to you is at retail. If a retail sale is made in this State, the fact that the purchaser will use the property outside the State does not exempt the transaction from the sales tax unless the retailer is required to ship the property outside this State (Ruling 55, copy enclosed).

In addition to the sales tax, California has a use tax which is legally imposed on the purchaser and applies to the use in this State of property which has been purchased for use in this State. The use tax does not apply to any transaction which is subject to the sales tax. As indicated in Paragraph B of Ruling 55, the use tax would not apply to the mere temporary storage in California of sample merchandise which is eventually used outside California.

If sample merchandise is obtained by merely withdrawing a sufficient quantity from your inventory of regular merchandise, it is proper for you to purchase all such merchandise ex tax for resale. That is, at the time of purchase you know that some of the merchandise will be used rather than resold but you do not know which specific items will be used and which will be resold.

If a person properly purchases property ex tax for resale and uses the property, he is liable for a use tax measured by the cost of the property used. The use tax will not apply to such of your samples as are properly purchased for resale and used [by the purchaser] outside California but will apply to samples properly purchased for resale and used in California. [If you give samples away by shipping them by common carrier from California directly to the recipients, you would be regarded as using them in California and use tax would apply to that use].

If particular merchandise is purchased specifically for sample use, it is improper to give a resale certificate because you know at the time of purchase that it will be used and not resold. Such purchase, however, might still be exempt from the sales tax if purchased from an out-of-state seller under the conditions outlined in Paragraph A-1-(a) of Ruling 55. If it is exempt from the sales tax, the use tax is the applicable tax and applies to samples used in California but does not apply to samples merely stored in California but used outside California.

If property is purchased under such circumstances that the sales tax applies but you nevertheless give a resale certificate, the transaction is not thereby shifted from a sales tax situation to a use tax situation. Your supplier may still be liable for the tax, but by giving a resale certificate improperly, you shift the primary responsibility for the payment of the tax to yourself. You are then under a duty to report and pay the tax measured by the total sale price and it is immaterial that some of the property purchased will not be used in California.

See also Section 6094.5

Very truly yours,

Bill Holden
Junior Counsel

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cc: Inglewood - Auditing