

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

340.0125

In the Matter of the Petition )  
for Redetermination of State ) DECISION AND RECOMMENDATION  
and Local Sales and Use Taxes )  
 )  
Petitioner )

The above-entitled matter came on regularly for hearing on November 24, 1980 in San Jose, California, before H. L. Cohen, Hearing Officer.

Appearing for Petitioner: --- --- ---  
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Appearing for the Board: --- --- ---  
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Observer: --- --- ---  
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Protest

Petitioner protests the assertion of tax on the use of mailing lists in California. Tax was asserted based on an audit covering -the period from January 1, 1977 through September 30, 1979. A deficiency determination was issued February 20, 1980. The amount upon which the protested tax is based is \$32,952.

Contention

Petitioner contends that its uses of mailing lists are one time uses not subject to tax.

Summary

1. Petitioner is a corporation engaged in sales of office equipment through catalogs. It maintains no retail stores. The last previous audit was for the period through March 31, 1967.
2. Petitioner mails catalogs to customers and others four times or more per year. Catalogs are sent to all previous customers from petitioner's own mailing list. Petitioner also

purchases selected mailing lists from suppliers located outside the state. The lists come in the form of computer printouts which are cut up and pasted onto the catalogs. Occasionally petitioner purchases two copies, of a list for use on two mailings. The second list is a carbon copy of the original list. The contracts which petitioner signs with the list suppliers prohibit petitioner from copying the lists. The charges made by the list suppliers depend upon whether one or two copies of the list are furnished to petitioner.

3. The auditor regarded petitioner as having made more than one use of a list if petitioner bought two copies of the same list. Because Sales and Use Tax Regulation 1504 (a) (3) exempts from tax only those transfers of mailing lists which are for one time use only the auditor asserted tax on those purchases of multiple copies of lists.

### Analysis and Conclusions

1. Regulation 1504 provides in Subdivision (a) (2) that in general tax applies to transfers of mailing lists. Subdivision (a) (3) an exception to the rule in Subdivision (a) (2), provides that tax does not apply to transfers or uses of mailing lists, use of which is limited by contract for one time only. The question here is whether for purposes of the tax the purchase of two copies of a list constitutes a purchase of two lists which are each used once or purchase of one list which is used more than once. To arrive at a conclusion it is necessary to examine the basis for the rule.

2. Section 6051 of the Revenue and Taxation Code applies tax to sales of tangible personal property; Section 6201 applies tax to uses of tangible personal property. Neither sales nor use tax applies to sales of services. Subdivision (a) (3) of the regulation states that charges for single uses of mailing lists are regarded to be for the service of compiling the list. That is the basis for not applying tax in that situation. Where a list is used more than once, then it can no longer be concluded that the charges are for the compilation services; rather, the charges are for the physical copy of the list itself, which is tangible personal property. I regard the transfer of two copies of the same list the same as the transfer of one list which may be used twice because it can no longer be concluded that the charge is for compilation services. The tax asserted by the auditor is therefore correct.

### Recommendation

Redetermine without adjustment.

\_\_\_\_\_  
H. L. Cohen, Hearing Officer

\_\_\_\_\_  
Date

Reviewed By:

\_\_\_\_\_  
Principal Tax Auditor

\_\_\_\_\_  
Date