

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6450

December 20, 1990

Ms. D--- H---
K--- G--- C--- P---
O--- Division
XXXX XXrd Street
---, CA XXXXX

SY – XX-XXXXXX

Dear Ms. H---:

Your August 2, 1990 and August 24, 1990 letters to the State Board of Equalization Oakland District office have been referred to the legal staff for reply.

We understand that K--- G--- is a commercial printer. You have contracted with one of your customers, H--- V---, for you to print an advertising brochure on a monthly basis. The brochure is titled "Outlet & Discount Directory," and the format will be the same each month. H--- V--- claims that your sale of the brochure should be exempt from sales tax, because the brochure is a publication. You asked if the sale is exempt under any basis other than the exemption for sales of printed sales messages.

H--- V--- is apparently claiming that the sale would be exempt on the basis that the brochure qualifies as an exempt periodical. (Rev. & Tax. Code § 6362; Sales and Use Tax Reg. 1590, Newspapers and Periodicals.) Section 6362 provides at subdivision (a):

"There are exempted from the taxes imposed by this part, the gross receipts from the sale of, and the storage, use, or other consumption in this state, of tangible personal property which becomes an ingredient or component part of any newspaper or periodical regularly issued at average intervals not exceeding three months and any such newspaper or periodical."

Regulation 1590 defines "periodical" at subdivision (a)(2):

"The term 'periodical' as used herein is limited to those publications which appear at stated intervals, each issue of which contains news or information of general interest to the public, or to some particular

organization or group of persons. Each issue must bear a relationship to prior or subsequent issues in respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them. Each issue must be sufficiently similar in style and format to make it evident that it is one of a series...The term does not include catalogs, programs, score-cards, handbills, price lists, order forms or maps. Neither does it include shopping guides or other publications of which the advertising portion, including product publicity, exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period.”

You sent for our review one issue of the brochure. Well over 90 percent of the printed area of the issue you sent is advertising. Since you note that the format is the same each month, we conclude that your sale of the brochure does not qualify as an exempt sale of a periodical.

You believe that your sale of the brochures is exempt as a sale of printed sales messages when such brochures are picked up by a distribution house or common carrier and distributed to the retailers at no charge.

We agree that the brochures qualify as printed sales messages as defined at subdivision (a)(1) of Regulation 1541.5, Printed Sales Messages. Tax does not apply to the sale of printed sales messages which are:

- (1) Printed to the special order of the purchaser;
- (2) Mailed or delivered by the seller, the seller's agent or a mailing house acting as the agent for the purchaser, through the United States Postal Service or by common carrier;
- (3) Received by any other person at no cost to that person who becomes the owner of the printed material.

The printed sales messages you publish are printed to the special order of the purchaser, and we assume that, in every instance, a common carrier is involved in some stage of the delivery to the recipients of the printed sales messages. See Regulation 1541.5, subdivision (b)(5).

We agree with the conclusion you reached in your August 2 letter that your sale of the portion of the printed sales messages that are picked up by H--- V--- is taxable. Tax does not apply to the sale of the portion delivered to third party recipients at no cost. However, your August 24 letter notes that the common carrier also delivers a portion of the brochures to the companies which have paid for advertising (advertisers). This raises the issue of whether those printed sales messages which are delivered to an advertiser are “received...at no cost to that person.” Subdivision (a)(5) of Regulation 1541.5 defines “cost”:

“COST” means any consideration given for the acquisition of the property, whether directly or indirectly. Examples of indirect costs

include subscription fees, franchise fees or any general overhead billing.”

Your August 24 letter states that:

“Companies advertising in the H--- V--- publication pay a set fee from the advertisement. They then choose to, or not to, receive some of the booklets for distribution. There is no fee for receiving the booklets. All advertisers pay the same, regardless of whether or not they receive any booklets for distribution.”

Since the advertisers pay the same fee for placing an advertisement in the printed sales message regardless of whether the advertiser chooses to receive the printed sales messages, we agree with your statement that the advertiser pays no fee to receive the booklets. The Board has taken the position that when a franchisor charges a fee to a franchisee to cover expenses, the franchisee thereby pays for advertising brochures provided by the franchisor. We believe that, under the facts you provide, the advertisers pay the fee to H--- V--- specifically for advertising. The fee is not attributable to brochures sent to the advertisers. Therefore, we conclude that the printed sales messages which are delivered to the advertisers are delivered at no cost. Sales tax does not apply to the sale of the portion delivered to the advertisers.

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

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

Enc.

bc: --- District Administrator