



STATE BOARD OF EQUALIZATION

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 Executive Director

March 2, 1995

X-----

Re: X-----

Dear X-----,

This is in response to your letter dated January 25, 1995 in regard to the application of tax on sales of printed sales messages.

You state that you are a graphic designer and also broker printing. We understand this to mean that you design and prepare camera-ready art which is used by a printer from whom you purchase printing materials' which you resell to your clients at retail. You ask a series of questions regarding the application of tax on your sales of the camera-ready art and related printed materials to your clients. For purposes of clarity, we have responded separately to each of your questions below.

- “1) If I produce the graphics and printing for a printed sales message it is my understanding that if I mail the piece for my client that the printing portion becomes exempt from tax and I still tax the graphics. I understand that I must retain a timely exemption certificate from my client.”

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) Taxable gross receipts include all amounts received with respect to the sale, with no deduction for the cost of materials, service, or expense of the retailer passed on to the purchaser, unless there is a specific statutory exclusion. (Rev. & Tax. Code § 6012.)

Revenue and Taxation Code section 6379.5 provides an exemption for sales of printed sales messages¹ printed to the special order of the purchaser and mailed-or delivered directly by the seller, the seller's agent, or a mailing house acting as an agent for the purchaser, through the United States Postal Service or other common carrier to any other person who becomes the owner of such printed-material-at-no-charge to that person. The relevant terms of this exemption are set forth in Sales and Use Tax Regulation 1541.5 (copy enclosed).

¹ Printed sales messages are defined as catalogs, letters, circulars, brochures, and pamphlets printed for the principal purpose of advertising or promoting goods or services. (Reg. 1541.5 (a) (1) .)

We are unable to determine whether your sales of printed materials qualify for the printed sale message exemption based on the information you have provided. (You have not provided us with a complete description of the transaction.) If the requirements of Regulation 1541.5 are met, your sales of printed materials are exempt from tax and you must obtain and retain supporting documentation of your delivery of the property. The supporting documentation is described in subdivision (c) of Regulation 1541.5.

We understand that you also sell the camera-ready art used in the production of your printed sales messages. If so, tax applies to the sale of materials to you which are incorporated into the camera-ready art² unless you sell the camera-ready art to your client prior to its use. (Regs. 1541(d), 1541(e).) In the absence of evidence to the contrary, it is presumed that you sold the materials incorporated into the camera-ready art to your client prior to its use in the printing process if the materials are separately listed and priced either on the same sales invoice on-which the printed matter is billed or on a separate sales invoice. (Reg. 1541 (e) (3) .) The actual sale of the finished camera-ready art to your client in California is subject to tax even if your sale of the materials printed from the camera-ready art qualifies for the printed sales message exemption. (Res. 1541.5(e).) Tax applies to the total gross receipts from the sale of the camera-ready art including charges for consultation and research and charges for supervision related solely to the production of camera-ready art. (Business Taxes Law Guide Annot. 432.0010 (10/14/93).)

“2) We could not find anything in the regulations that discussed the Bulk Rate Permit. I was wondering if I mail this piece if I need to apply for my own BRP, or if I can mail it under my client’s existing number?”

The printed sales message exemption does not require you to maintain or use your own bulk rate permit when mailing or delivering printed sales messages through the U.S. Postal Service on behalf of a client. This means that you may qualify for the printed sales message exemption when using your client's bulk rate permit provided the sale satisfies the requirements of the exemption set forth in Regulation 1541.5.

“3) If ... [I] mail the printed sales message and find that the printer had printed an excess on the original quantity ordered, I have three options: 1) I can throw them away if not needed; 2) I can give them to my clients as extras; or 3) I can charge my client for them if he/she has a use for them. If I choose option 2 or 3 does this make the entire printing charge taxable or just the extra portion delivered to my client rather than being mailed?”

Providing or selling excess printed materials directly to a client does not make your sales of materials which do qualify for the printed sales message exemption subject to tax. However, if you purchased the excess printed materials on an extax basis (i.e., for resale) and provide them to your clients at no cost without being obligated by your contract to do so, you are required to report and pay use tax to the Board measured by your purchase price of the excess printed materials purchased from the printer. (Rev. & Tax. Code §§ 6201, 6202i Business Taxes Law

² If you purchased these materials extax for resale, you must report use tax measured by the purchase price of these materials. (Rev. & Tax. Code § 6201; Reg. 1541(d).)

Guide Annot. 280.0640 (3/15/60).) If you make a charge for the extras provided to your client (which would include transactions in which your contract requires you to provide the extras to your client), sales or use tax would apply to your sale of the excess printed materials unless an exemption applies. (Rev. & Tax. Code §§ 6051, 6201, 6401.) Finally, tax would not apply if you purchased all the printed materials ext ax for resale and then discard the extras without having made any use of them. (Business Taxes Law Guide Annot. 570.1380 (10/23/64).)

If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:plh

Enclosure – Reg. 1541.5

Cc: Sacramento District Administrator