

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
(916) 445-6493

April 27, 1990

Mr. D--- K---  
Publisher  
J--- Publications  
XXXX --- Street  
---, CA XXXXX

J--- Publications (No account number)  
S--- M--- Chamber of Commerce –  
SR -- XX XXXXXX  
Printed sales messages – “All About Business In  
---”

Dear Mr. K---:

In your February 20, 1990 letter to the Board’s legal staff, you request our opinion on whether the printing and publication of a magazine, “All About Business in --- 1989/90”, is subject to sales tax. You note that you have received conflicting oral opinions from different Board officials. You believe the governing regulation is our printed sales message regulation. You write:

“Case 1”

“J--- Publications publishes the All About Business publication for the --- --- Chamber of Commerce to distribute to lure economic development clients, new businesses, and executives, to ---. All copies are distributed by the Chamber. J--- Publications keeps ad revenue.

“J--- Publications writes the copy and sells the advertising. The Chamber approves the contents before it is printed, to assure it meets their needs. J--- Publications pays the printer. All copies are shipped by the printer to the Chamber directly, not to J--- Publications. The Chamber sells All About Business and collects and pays sales tax to the state. The publication is sold to the audience described above, with some sent by the Chamber through the mail to users, and others distributed over the counter or at business events.

“Should the printer charge sales tax on the printing bill to J--- Publications?”

“Case 2

“J--- Publications has identical contracts with other Chambers, except that in some cases the Chambers distribute the publication at no charge for the most. Therefore Chambers are collecting very little, if any, sales tax.

“Should the printer charge sales tax on the printing bill to J--- Publications?”

Opinion

Under the Sales and Use Tax Law, generally sales at retail of tangible personal property for a consideration are subject to sales tax, unless a specific exemption or exclusion applies. A sale of tangible personal property at retail is a sale for any purpose other than resale by the purchaser in the regular course of business. (Rev. & Tax. Code §§ 6051, 6006, 6007). If the purchase is for resale, the purchaser must issue a resale certificate in the form and under the conditions set out in Sales and Use Tax Regulation 1668. The burden of proving that a sale is not at retail is on the seller, unless the seller timely and in good faith takes a certificate from the purchaser that the property was purchased for resale.

There is an exemption from sales and use tax for printed sales messages if the transaction meets the conditions set out in Sales and Use Tax Regulation 1541.5. Under this regulation, printed sales messages are defined to mean, among other things, circulars, brochures and pamphlets printed for the principal purpose of advertising or promoting goods or services. Tax will not apply to the sale or use of printed sales messages which meet all of the conditions for delivery set out in subdivision (b) of that regulation.

The magazine, “All About Business in ---” is not a printed sales message. The magazine contains articles of general interest about types of industries and economic conditions in the --- metropolitan area. It is not advertising matter which is printed principally for the purpose of advertising particular goods or services. In fact, if this publication were published at least quarterly, the publication would qualify as a periodical exempt from sales or use tax under Regulation 1590, since it contains news or information about the --- metropolitan area of general interest to readers.

However, the printer’s sales to you of this publication are not subject to tax because J--- Publications makes no use of this publication other than to sell it to the --- --- Chamber of Commerce. Accordingly, you should issue a resale certificate under Regulation 1668 in order to acquire the printing of this publication without payment of sales tax reimbursement to the printer. Likewise, since the --- --- Chamber of Commerce is selling this publication, it should also issue a resale certificate to you in order to acquire the publication without paying sales tax reimbursement. Then the Chamber must report and pay sales tax on its sales of the publication to the public. If the Chamber does not sell certain copies purchased tax-free under its resale certificate, but instead gives them away, it is liable for use tax on its use of any of these copies. (Reg. 1668(a)(2)). But with respect to your description of case 2 above, when you sell similar publications to other Chambers of

Commerce which will not resell them, but instead will give them away, you cannot accept a resale certificate. Accordingly you are the retailer and sales tax applies to your sales of those publications to those Chambers.

I enclose Regulations 1541.5, 1590, and 1668 for your information. Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott  
Senior Tax Counsel

JA:jb  
Enclosures