

**STATE BOARD OF EQUALIZATION**

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April 2, 1996

Mr. R--- S---, Controller
W--- C--- P--- Inc.
P. O. Box XXXX
---, CA XXXXX

Re: *Sales and Use Tax Annotation 432.0121*
SY -- XX-XXXXXX

Dear Mr. S---:

This is in response to your letter dated February 20, 1996, in which you analyzed Sales and Use Tax Annotation 432.0121 in relation to Sales and Use Tax Regulation 1541.5. You state:

“It appears that this annotation directly contradicts itself and is in conflict with the intent of 1541.5.

“The annotation states that the printed sales messages are not printed to the special order of the purchaser. If not the purchaser then who? It can't be the advertisers - they are the publisher's customers and are not involved in the printing contract any more than a passenger on an airline is involved in the decision of which brand of fuel to use. The passenger is paying for space on the plane and the advertiser is paying for space in the printed sales message. The passenger expects to get safely to a destination, the advertiser expects that his message will be read by a select audience.

“It is the publisher who determines the mix of editorial and advertising along with the 'look and feel' of the printed sales message itself. He knows that his publication will live or die based [on] his decisions regarding the content, format and distribution of the Shopping Guide. So by definition, the printed sales message is printed to the special order of the publisher.”

We understand that you are currently involved in an audit. Generally, the State Board of Equalization's legal staff policy is to not respond to questions posed by taxpayers who are in the midst of an audit. However, in checking with the district office, the question you ask does not involve any of the issues that have been raised in the audit.

As you know, section 6051 of the Revenue and Taxation Code imposes the sales tax on retailers for the privilege of selling tangible personal property at retail in this state. The measure of tax is the gross receipts from the retail sales in this state of tangible personal property. Section 6007, in part, provides that a retail sale means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. There are certain specific exemptions provided under the law for specific retail sales. One such exemption is contained in Revenue and Taxation Code section 6379.5 which provides the following exemption from the sales tax for the sale of printed sales messages:

“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 catalogs, letters, circulars, brochures, and pamphlets consisting substantially of printed sales messages for goods and services printed to the special order of the purchaser and 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 to any other person at no cost to that person who becomes the owner thereof.”

Sales and Use Tax Regulation 1541.5 is this Board's interpretation of section 6379.5. As you noted, the State Board of Equalization's legal staff took the following position expressed in Business Taxes Law Guide Annotation 432.0121:

“Shopping guides published periodically, which do not qualify as newspapers or periodicals, are distributed free of charge by the publisher who obtains revenue from the sale of advertising space in the shopping guide. Although these shopping guides are used principally to advertise goods and services, they do not meet the test of 'printed sales messages' provided in Regulation 1541.5(a)(2), because they are not 'printed to the special order' of the purchaser. Under these circumstances, the publisher is the consumer of these shopping guides and owes tax with respect to the paper and ink used to produce them.”

We do not agree with your analysis or your conclusion that the annotation contradicts itself and is in conflict with the intent of Sales and Use Tax Regulation 1541.5. In the facts described in the annotation, the publisher/printer produces printed material which qualifies as a printed sales message in that it is printed for the principal purpose of promoting the sale of goods or services. However, in order to qualify for the exemption, the printed matter must be printed to the special order of the purchaser and mailed or delivered by the seller (i.e. the printer) to someone other than the purchaser pursuant to the requirements of section 6379.5. The publisher

of the shopping guide described in the annotation is merely selling advertising space to advertising customers. The described transaction does not involve the sale of printed material to the special order of the purchaser since at no time does the publisher transfer title of the shopping guide to the customer/advertiser. As such, the publisher is the consumer of the shopping guide. It follows that the publisher must pay tax on the purchase of the materials used to produce the publication. We believe the annotation is correct.

We believe there is no conflict with the intent of Sales and Use Tax Regulation 1541.5 since a publisher may purchase printed materials from a California printer the sale of which, if the requirements for the exemption are met, is not subject to sales tax. Therefore, a printer in California is on the same footing as a printer in Nevada vis-à-vis the sale of printed sales messages to a purchaser. The goal of providing the "level playing field" that you describe in your correspondence is therefore achieved.

I trust that this response satisfies your needs. If you have any additional questions, please do not hesitate to write again.

Yours very truly,

Anthony I. Picciano
Staff Counsel

AIP:cl

cc: --- --- District Administrator (--)
Mr. Bud Jones, --- District Office (---)