

**STATE BOARD OF EQUALIZATION**

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

July 28, 1989

Mr. J--- T. F---
Legal Counsel
C--- N--- P--- A---
---, CA XXXXX

Dear Mr. F---:

This is in reply to your June 16, 1989 to Assistant Chief Counsel Gary Jugum regarding the application of sales tax to sales of newsprint and ink to publishers of "shoppers". We understand that the shoppers to which you refer are publications periodically distributed for free but which do not qualify as newspapers or periodicals for purposes of Revenue and Taxation Code section 6362.

You believe that Sales and Use Tax Regulation 1541.5, Printed Sales Messages, should be applied to exempt from tax the sale of newsprint and ink to publishers who purchase the property to publish a shopper for distribution at no cost to the person who receives the shopper.

The California Sales and Use Tax Law imposes a sales tax on retailers for the privilege of selling tangible personal property at retail in this state. (Rev. & Tax. Code § 6051.) Revenue and Taxation Code section 6006(a) defines a sale to mean and include any transfer of title or possession, in any manner or by any means whatsoever, of tangible personal property for a consideration. A "retail sale" is a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. (Rev. & Tax. Code § 6007.) Sales and Use Tax Regulation 1541.5 is based on Revenue and Taxation Code section 6379.5 which provides an exemption from sales and use tax for the sale and use of specific property under specific circumstances:

"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.”

We disagree that the publisher of the shopper sells the shopper or any part of the shopper to the customers who purchase advertising in the shopper. Rather, the publisher sells advertising space. The State Board of Equalization has long considered that the sale of advertising space is not a sale of tangible personal property. (BTLG Annot. 540.0020.)

Under the facts you provide, the sale of tangible personal property is the sale of the paper and ink to the publisher. The publisher does not sell the resulting shopper but provides it to donees for no charge. The sale of the ink and paper to the publisher is, therefore, a retail sale subject to sales tax, and the exemption provided by section 6379.5 does not apply.

You also noted that you believe that the shopper is an “exempt ‘container’” under Regulation 1541.5, subdivision (b)(7). We do not understand the premise for your conclusion; however, since it is our opinion that the publisher does not sell the shopper to the advertiser, we do not believe exemption for certain sales of containers is applicable. (Cf. Sales and Use Tax Reg. 1589, subd. (b)(1).)

You noted that you believe there are policy reasons for the Board to adopt your proposal for the application of tax. We note that, it is a well-established principle of law that tax exemptions are solely a matter of legislative grace, and, as such, a tax exemption must be strictly construed against the taxpayer. (Hotel del Coronado Corporation v. State Board of Equalization, 15 Cal. App.3d, 612.) The State Board of Equalization, as an administrative agency, has no authority to enlarge the exemption statute beyond that provided by the Legislature. (American Distilling Company v. State Board of Equalization, 55 Cal.App.2d, 799.)

We hope this answers your question; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD:sr