

State of California
BOARD OF EQUALIZATION

SALES AND USE TAX REGULATIONS

Regulation 1541.5. PRINTED SALES MESSAGES.

Reference: Section 6379.5 and 6421, Revenue and Taxation Code.

(a) DEFINITIONS.

(1) "PRINTED SALES MESSAGES" means and is limited to catalogs, letters, circulars, brochures, and pamphlets printed for the principal purpose of advertising or promoting goods or services. The term includes such items as department store catalogs, brochures advertising automobiles and vacations, circulars advertising professional services, and coupon books. The term does not include campaign literature and other fund-raising materials, stationery, reply envelopes, except as provided for in (b) of this regulation, order forms, sales invoices, containers for sample merchandise, newspapers or periodicals, calendars, notepads, cash register tapes, or directories unless they meet the principal purpose of advertising or promoting goods or services.

(2) "PRINTED TO THE SPECIAL ORDER" means designed and prepared according to the specific request of the purchaser. The term is also applicable to additional or supplemental orders, when the original order was printed to the special order of the purchaser.

(3) "MAILING HOUSE" means any person engaged in the business of stamping, addressing, sealing or otherwise preparing property for mailing for compensation.

(4) "COMMON CARRIER" means any person engaged in the business of transporting property for hire or compensation and who offers his services indiscriminately to the public or to some portion of the public.

(5) "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.

(6) "ANY OTHER PERSON" as used herein means any person, other than the purchaser or the purchaser's agent, who takes physical delivery of the printed sales messages and who exercises dominion and control over the property.

(b) APPLICATION OF TAX. Operative January 1, 1987, tax does not apply to the sale or use 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.
- (4) If all of the above conditions in (b) (1) through (b) (3) are not met, tax applies to the charges for the printed sales messages to the same extent as to charges for printed matter generally.
- (5) To satisfy the common carrier requirement, it is only necessary that a common carrier be involved in some stage of the delivery.
- (6) The tax exemption applies regardless of whether or not the purchaser of printed sales messages offers for sale the goods or services advertised in the printed sales messages.
- (7) Tax does not apply to charges for containers, such as envelopes or wrapping paper, when sold with the printed sales messages for shipment or delivery, or when sold to persons who place the printed sales messages in the container and sell the printed sales messages together with the container.
- (8) Generally, tax applies to sales of reply envelopes and order forms. However, reply envelopes, order forms, or other printed matter will be considered part of the printed sales message when such property is inserted in, stapled, glued, or other wise affixed to the printed sales message in such a manner that it becomes a component or integral part of the printed sales message and is sold together with the printed sales message. Accordingly, the total charge in such cases is deemed to be for printed sales messages and not subject to tax.
- (9) When printed sales messages are attached to reply envelopes and the reply envelopes are provided for the primary purpose of securement of a return payment on a billing, or business reasons other than the promotion of goods or services, tax applies to charges for such reply envelopes.

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(10) A purchaser of printed sales messages may act as the agent of the seller of the printed sales messages to purchase from a third party supplier envelopes or other printed matter which become incorporated by the seller into the printed sales message and are sold together with the printed sales message. The purchaser must clearly establish with respect to any acquisition of printed matter that it is acting as agent for the seller of printed sales messages. To establish that a particular acquisition was made as an agent, the purchaser must (1) clearly disclose to the supplier the name of the seller for whom the purchaser is acting as agent, and (2) obtain, prior to acquisition, and retain written evidence of agent status with the seller of printed sales messages. The purchaser (agent) may not charge the seller, exclusive of any agency fee, an amount in excess of the amount paid to the third party supplier for the purchase of the envelopes or other printed matter (see Regulation 1540). The sale by the seller (third party supplier) under this agency relationship is a sale for resale to the seller of the printed sales message. Accordingly, the agent should provide the supplier with a resale certificate, purchase order, or other such document containing the principal/seller's name, address, permit number, signature of the agent or principal/seller, date of execution, and a statement that the property is purchased "for resale." (see Regulation 1668). Unless the resale certificate, purchase order, or other such document is given on behalf of the seller of printed sales messages pursuant to the agency agreement, it will be presumed that the purchaser is acting on its own behalf. At no time will the purchaser of the printed sales messages act as an agent of the seller with regards to the delivery of the printed sales messages.

(c) SUPPORTING DOCUMENTATION. Any seller claiming an exemption for the sale of printed sales messages must obtain and retain supporting evidence of the delivery of the property.

(1) Delivery by the Seller. A seller who mails exempt printed sales messages through the United States Postal Service or by common carrier, should obtain and retain U.S. Postal receipts or bills of lading and obtain and retain a timely exemption certificate, taken in good faith, from the purchaser. The exemption certificate should be similar to the following:

"I hereby certify that the items purchased are printed sales messages and that the printed sales messages described herein which I shall purchase from _____ will be delivered by the seller or the seller's agent through the U.S. Postal Service or by common carrier at no cost to another person who becomes the owner of the printed material. If any of such printed material is determined not to be a printed sales message or is delivered other than as specified above, I understand that I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property. Description of property to be purchased: _____
Date _____,
Purchaser: _____
(Company Name)
Address: _____
Signature _____
(Signature of Authorized Person)
Title: _____
Seller's Permit No. of Purchaser (if any) _____"

(2) Delivery by Mailing House as Agent for Purchaser. When the seller of printed sales messages delivers the property to a mailing house acting as agent for the purchaser, the contract of sale should specify to whom the property was delivered, and the seller should obtain and retain a timely exemption certificate, taken in good faith from the purchaser, similar to the following:

"I hereby certify that the items purchased are printed sales messages and that the printed sales messages described herein which I shall purchase from _____, delivered by the seller to the mailing house designated below, will be delivered by the mailing house, acting as my agent, through the United States Postal Service or common carrier at no cost to another person who becomes the owner of the printed material. If any such printed material is delivered other than as specified above, I understand that I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property. Description of property to be purchased: _____

Mailing House _____
(Name)

(Address)

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Date _____, _____

Purchaser: _____
(Company Name)

Address: _____

Signature: _____
(Signature of Authorized Person)

Title: _____

Seller's Permit No. of Purchaser (if any) _____"

(3) A copy of the exemption certificate described in subdivision (c)(1) or (c)(2), accepted in good faith, shall relieve the seller from liability for the sales tax for the sale of printed sales messages delivered in accordance with subdivisions (b)(2), (b)(3), and (b)(10) of this regulation. If the seller fails to deliver the printed sales messages in such a manner, the seller will not be relieved from liability for the sales tax, on the ground that an exemption certificate was obtained with respect to the transaction.

(4) If a purchaser certifies in writing to a seller that the printed matter is a printed sales message or that the printed sales messages purchased will be delivered in a manner entitling the seller to regard the gross receipts from the sale as exempt from the sales tax and it is determined that the printed matter is not a printed sales message or the purchaser arranges for the delivery of the printed sales messages in some other manner, the purchaser shall be liable for payment of sales tax as if the purchaser were a retailer making a retail sale of the printed matter at the time of such use and the sales price of the printed matter to the purchaser shall be deemed the gross receipts from such retail sale.

(5) If a purchaser wishes to designate on each purchase order that the property is an exempt printed sales message, the seller should obtain a qualified exemption certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order constitutes an exempt printed sales message within the provisions of this regulation or whether tax applies to the order. If each purchase order does not so specify, it will be assumed that the property covered by that purchase order is not an exempt printed sales message. If the purchase order includes both exempt printed sales messages and printed matter subject to tax, the purchase order must specify which items are exempt printed sales messages and which items are subject to tax.

(6) When the purchaser and seller of printed sales messages enter into an agency agreement for the purchase of envelopes or other printed matter, pursuant to subdivision (b)(10), the purchaser must clearly disclose to the third party supplier the name of the seller for whom the purchaser is acting as an agent prior to, or at the time of purchase. This condition will be met by including on all purchase orders provided to the third party supplier a statement containing the elements noted on the following example:

"This order is placed for an on behalf of _____
(printer/principal's name)

seller's permit No. _____
(printer/principal's permit number)

located at _____
(address of printer/principal)

for whom _____
(purchaser/agent's name)

is acting as agent.

The order is for _____ envelopes to be used as containers for printed sales
(number of envelopes)

messages. The envelopes are to be delivered to _____
(mailing house name)

for inclusion of the printed sales message.

Date: _____
(Signature of Purchaser or Authorized Agent)"

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(7) Pursuant to subdivision (b)(10), prior to the acquisition of the envelopes or other printed matter, the purchaser and seller of the printed sales messages must agree that the purchaser is acting as an agent for the seller with respect to the purchase of envelopes or other printed matter which become incorporated by the seller into the printed sales message sold. This condition will be met by including a statement in a letter of agreement or other such document similar to the following example:

"You are hereby authorized to act as our agent in the procurement on our behalf of _____
(number of envelopes)
envelopes purchased for resale under seller's permit number _____
(printer/seller's permit number)
from _____
(third party supplier's name)
located at _____
(address of third party supplier)
for inclusion of printed sales messages to be sold and delivered pursuant to Regulation 1541.5.
Date: _____ 19 _____
(Signature of Printer/Seller)"

(8) The fact that the seller/principal of the printed sales messages may not formally reimburse the purchaser/agent with respect to the acquisition of envelopes or other printed matter from the third party supplier will not invalidate the agency relationship between the seller and purchaser of printed sales messages when all other provisions of this regulation are met.

(d) Examples of the Application of Tax Under Specific Circumstances.

(1) A real estate company contracts with a printer to design and prepare a brochure describing homes for sale in an area. The brochures are delivered by the seller to a mailing house for redelivery by common carrier to local merchants at no charge to the merchants. The merchants voluntarily display on the store premises the brochures which are available to the public free of charge. The merchants may dispose of the brochures in any manner they see fit. Tax does not apply to the charges for the brochures by the printer since the mailing house delivered the brochures by common carrier to a person other than the purchaser.

(2) The same real estate company in Example 1 requests the printer to prepare a second distribution of the same brochures in the same manner one month later. Tax does not apply to the charges for the second distribution, since the original printed matter was prepared to the special order of the purchaser and met the other conditions of the exemption.

(3) A manufacturer of automotive oil contracts with a printer to design and prepare a brochure describing the unique features of the oil. The brochures are delivered by the seller to a mailing house for redelivery by the U.S. Postal Service to automotive parts stores at no charge to the stores. The automotive parts stores voluntarily display on the store premises the brochures which are available to the public free of charge. Although the automobile parts store sells the oil, there is no direct or indirect cost to the store for displaying the brochures, that is, the wholesale cost is not determined by the distribution of the brochures. Tax does not apply to the charges for the brochures by the printer since the mailing house delivered the brochures by the U.S. Postal Service to a person other than the purchaser and all other conditions of the exemption were met.

(4) A fast-food franchiser contracts with a printer to prepare and deliver by a common carrier to the franchisee, coupons for a free soft drink. The franchisee distributes the coupons to its patrons at the premises. The franchisee pays a flat monthly fee to the franchiser for general expenses incurred by the franchiser for promotion of the products sold by the franchise. Although no specific charge was made by the franchiser to the franchisee, an indirect charge was made by way of the monthly fee, and, accordingly, tax applies to the charge for the printed matter.

(5) A company contracts with an advertising agency, who is acting as a seller, to prepare and deliver printed sales messages. The advertising agency contracts with a third party to do the printing and mailing. When the advertising agency separately bills the printed material to the company, and all other requirements for exemption are met, tax does not apply to the advertising agency's charges for the printed matter, since the seller need not be the actual printer to qualify for an exemption from the tax.

(6) A department store contracts with a printer to prepare sales catalogs. The printer delivers the catalogs through the U.S. Postal Service to the department store where the catalogs are available at no charge to the store's patrons. Tax applies to the charges made by the printer since delivery was made to the purchaser.

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(7) The same department store in Example (6) requests the printer to deliver 75 percent of the catalogs through U.S. Postal Service to be distributed to individuals at no cost to those individuals. The printer delivers 25 percent of the catalogs to the department store and separately lists and prices on the invoice to the department store the charges for the printing aids used in the preparation of the printed sales messages. Tax would not apply to the charges by the printer on 75 percent of the printed material; tax would apply to the 25 percent delivered to the department store and to the entire charge for the printing aids.

(8) An attorney requests a printer to prepare and mail a letter to potential clients advertising the attorney's professional services. The printer inserts a reply envelope into the folded letter and places both into a larger envelope and mails the material through the U.S. Postal Service. The letter qualifies as an exempt sales message. The outer envelope is an exempt container sold with the exempt printed sales message. The reply envelope is a component or integral part of the printed sales message when inserted with the letter into the larger envelope and sold with the exempt printed sales message.

(9) A furniture store requests a printer to prepare and mail billings and furniture advertisements to the store's customers. Both the billings and the advertisements are placed by the printer in the same envelope and mailed through the U.S. Postal Service. When the charges for the advertisement material are separately stated, tax does not apply to such charges. Tax does apply to the charges for the preparation of the billings and charges for the envelopes containing the billings, since the primary use of the envelopes is to mail billings and the addition of the printed sales messages is only secondary.

(10) A distributor requests a printer to prepare and mail through the U.S. Postal Service sales catalogs and order forms. The distributor also contracts with an envelope company to prepare reply envelopes to be incorporated into the catalog. The envelope company is requested by the distributor to deliver the reply envelopes to the printer, who will staple a reply envelope with an order form into the center of each catalog. The catalogs are subsequently delivered to the recipients free of charge through the U.S. Postal Service. Tax does not apply to the charges made by the printer for the catalogs or order forms. The order forms were sold by the printer along with the sale of the catalogs and became component parts of the catalogs. Tax applies to the distributor's purchase of the reply envelopes, since the reply envelopes were not component parts of the catalogs at the time they were purchased. However, when the distributor purchases the envelopes from the envelope company as an agent of the seller of the catalogs (in this case the printer), and such agency relationship is disclosed at the time of purchase, the reply envelopes will be considered sold with the catalogs. Accordingly, tax does not apply to the purchase of the envelopes (purchased for resale on behalf of the printer) or the printer's subsequent sale of the reply envelopes. In this case, the reply envelopes are sold along with the catalogs and become component parts when inserted.

(e) SPECIAL PRINTING AIDS. The exemption provided under this regulation is limited to sales of printed sales messages and does not affect the application of tax with respect to "special printing aids" or other materials used in the preparation of printed sales messages. Tax applies to the sale of "special printing aids" as provided in Section 1541(e) of Title 18.

History: Adopted September 2, 1987, effective November 13, 1987. Added Regulation 1541.5 to provide that the sale of printed sales messages as prescribed are exempt from tax.

Amended November 18, 1998, effective February 14, 1999. Subdivision (b)(8) amended by striking phrase "even . . . message" after "forms" in first sentence and adding words "inserted in" to second sentence. Subdivision (b)(10) added. Subdivision (c)(1) amended by adding phrase "items . . . the" to first sentence of first unnumbered paragraph and phrase "is . . . or" to second sentence. Subdivision (c)(2) amended by adding phrase "that . . . and" to first sentence of first unnumbered paragraph. Subdivision (c)(3) amended by striking word "and" from between "(b)(2)" and "(b)(3)" and adding words "and (b)(10)" to first sentence; phrase "or . . . regulation" deleted from second sentence. Subdivision (c)(4) amended by adding phrase "seller . . . or" and "it . . . purchaser" to first sentence. Subdivisions (c)(6-8) added. Subdivision (d)(8) amended by deleting phrase "places . . . envelope" and adding phrase "inserts . . . both" in second sentence; deleting word "not" adding "when . . . message" and deleting phrase "and . . . taxable" in last sentence. Last three sentences added to subdivision (d)(10).

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.