

BEFORE THE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Petition for Redetermination
Under the Sales and Use Tax Law of:

United States Sales Corporation
SY AC 11-606294
Case ID 89000010340

Appearances:

For Petitioner: George Isaacson, Attorney
For Sales and Use Tax Department: David Levine, Tax Counsel IV
For Appeals Section: John Abbott, Tax Counsel IV

MEMORANDUM OPINION

This opinion considers the merits of a petition for redetermination for the period July 1, 1993 through September 30, 1998. At the Board hearing, among other issues, petitioner protested a portion of a determination related to its purchases of exterior envelopes for mailing printed sales messages.

Petitioner, a corporation, operated a mail order company that solicited sales through sweepstakes promotions mailed to potential customers. It purchased printed sales messages (advertising materials) from various printers, who delivered the printed sales messages to a mailing house, Mail Marketing, a subsidiary of petitioner. Petitioner purchased the envelopes from vendors other than the printers from whom it purchased its printed sales messages; these vendors also delivered the envelopes to the mailing house. The mailing house then inserted the printed sales messages in the envelopes and mailed the envelopes with the printed sales messages by U.S. mail to petitioner's prospective customers.

Petitioner contends that its purchases of exterior envelopes are exempt from the use tax because, among other things, the envelopes themselves qualify as printed sales messages. Petitioner contends its purchases of these envelopes are exempt when delivered as required by California Code of Regulations, title 18, section 1541.5, Printed Sales Messages.

The Department argues that the primary purpose of the envelopes was to act as containers. Based on this, the Department argued that subdivision (b)(7) of section 1541.5, which covers envelopes sold as containers with the contents, was the exclusive provision applicable to the purchase of exterior envelopes.

OPINION

Subdivision (a)(1) of section 1541.5 defines the term "printed sales messages" as follows:

“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.”

Subdivision (b)(7) of section 1541.5 provides:

“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.”

Petitioner’s purchases of the envelopes are not exempt under subdivision (b)(7) of section 1541.5 because the vendors who sold the envelopes to petitioner did not sell them as containers for printed sales messages also sold by those vendors. The question presented is whether subdivision (b)(7) precludes an exterior envelope from independently qualifying as a printed sales message under subdivision (a)(1). We conclude that an exterior envelope may independently qualify as a printed sales message.

We conclude that under these facts, the envelopes are themselves printed sales messages because they meet the principal purpose of advertising or promoting goods or services within the meaning of subdivision (a)(1). Since they were delivered in the manner required by section 1541.5, petitioner’s purchases of the envelopes are exempt from tax. The petition should be granted as to this issue.

Adopted at Sacramento, California, on August 1, 2001.

Claude Parrish, Chairman

John Chiang, Member

Johan Klehs, Member

Dean F. Andal, Member

Marcy Jo Mandel, Member*

*For Dr. Kathleen Connell, pursuant to Government Code section 7.9.