

M e m o r a n d u m**432.0064.450**

To: X-----
Torrance District – AB

Date: July 11, 1995

From: Kelly W. Ching
Staff Counsel

Subject: X-----

This is in response to your memorandum received by us on April 4, 1995 regarding BTLG Annotation 432.0030, which concerns whether directories qualify as printed sales messages. You state:

“Please provide me the background on [the] above annotation. I have a situation wherein medical provider directories were mailed directly to potential enrollees, since they have to select an IPA and primary care physician and indicate them in the enrollment card.

“Enclosed are some letters from X----- (taxpayer) and X----- HMO (TP’s customer), and also [a] copy of the enrollment card.

“Are these medical provider directories always taxable whether they are mailed to potential members or mailed to existing members?”

It appears that your inquiry relates to directories that list the names of physicians and provide certain information about the physicians, such as their office addresses and areas of practice. I note that while you enclosed copies of what appear to be a X----- HMO rate sheet and a HMO enrollment card, you have not enclosed any copies of directories listing HMO participating providers. In your inquiry, it appears that you raise a question as to whether such directories, even if not considered printed sales messages when mailed to existing members, would be considered printed sales messages when mailed to potential members for the purpose of encouraging them to enroll in the HMO contracting with the listed physicians.

As you know, a retailer owes sales tax on its retail sales of tangible personal property in California, measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) The information you have provided indicates that TP sells the directories to HMO at

retail; therefore TP owes sales tax on its sales to HMO unless those sales are exempt from tax by statute.

The exemption for certain sales of printed sales messages is set forth in Revenue and Taxation Code section 6379.5, which provides:

“Printed sales messages for goods and services printed to the special order of the purchaser. 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.”

Regulation 1541.5 explains that the term "printed sales message" does not include directories unless they meet the principal purpose of advertising or promoting goods or services. BTLG Annotation 432.0030 considered facts almost identical to those described in your memorandum and its accompanying documents. In the situation that resulted in the annotation, we concluded that directories listing the medical service providers of an HMO constitute informational listings which do not advertise or promote the sale of goods or services. That is, directories listing medical service providers do not consist substantially of messages printed for the principal purpose of advertising or promoting goods or services; therefore, they are not considered printed sales messages as defined in subdivision (a) (1) of Regulation 1541.5. This means that sales of the medical service provider directories are not exempt from tax under section 6379.5, without regard to whether the directories are mailed to potential members or to existing members of the HMO.