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July 2, 1996

Mr. P--- J. L---
L---, C--- & V--- S---
XXXXX --- --- Drive, Suite XXX
---, CA XXXXX

**Re: "Neck Hangers"
Unidentified Taxpayer**

Dear Mr. L---:

This is in response to your December 12, 1995, letter in which you inquire of the application of sales tax to the sale of "Neck Hangers." You provided the following facts:

" . . . These Neck Hangers are sold to purchasers who attach them to non-returnable containers of property which is sold. You would find Neck Hangers, for example, on a champagne bottle describing the contents thereof or for other promotional purposes. Since they are attached to the property sold (although they can be readily removed), do they qualify as labels under Regulation 1589(b)(2)(B)? I am enclosing examples of these Neck Hangers for your review.

"We would also like clarification if these Neck Hangers could qualify as printed sales messages. They are printed to the special order of the purchase[r]s and delivered to the grocery stores by common carrier. The grocery stores are not the customers and they do not pay for them. As you can see by examining the enclosed exhibits, the printed matter promotes the product."

We reviewed the copies of the printed materials that you sent. You described item 1 as a "smart shelf talker" and noted it can be used as a shelf talker or neck hanger. You did not explain the use of a shelf talker. The item is a form which lists three charities, one of which a purchaser of a bottle of Mumm Cuvee --- may choose. Mumm Cuvee --- will send a donation of two dollars to that charity. Item 2 is a shelf talker. Items 3 and 4 are neck hangers which consist of advertising. Items 5 and 6 are shelf talkers. Item 7 is a neck hanger which is a pocket

planner. Item 8 is what you called a “sell sheet.” You did not give any further details regarding that item.

Since your inquiry is specifically directed to the “neck hangers” and whether they are labels or printed sales messages, we shall limit our discussion to items 1, 3, 4, and 7. If you wish advice regarding the sale of those items not considered, please write again providing information particular to their use and sale.

It is unclear to us who attaches the neck hangers to the bottles. In the first paragraph of your letter you indicate the purchaser attaches them to the bottles; in the second paragraph you state that the neck hangers are delivered to the grocery store by common carrier. We assume, for purposes of this response, that the neck hangers are placed on the bottles by the purchaser prior to their delivery to the grocery store.

Tax does not apply to the sale of labels if they are affixed by the purchaser to nonreturnable containers of property to be sold by the purchaser. (Sales and Use Tax Regulation 1589(b)(2)(B).) We would consider a neck hanger to be a label if it were attached to a bottle to describe the contents of the bottle and the application or use of its contents. (Bus. Taxes L. Guide Annot. 195.1760, 8/26/55.) The examples of the neck hangers that you sent do not describe the contents of the bottles nor do they instruct the application or use of the bottles’ contents. Rather, each is either a charity designation form, an advertisement, or a pocket planner. Therefore, the neck hangers to which you refer do not qualify as labels.

The sale and use of certain printed sales messages printed to the special order of the purchaser are exempt from sales and use tax. The printed sales messages must be 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. (Rev. & Tax. Code § 6379.5.)

Sales and Use Tax Regulation 1541.5(a)(1) defines “printed sales messages” as catalogs, letters, circulars, brochures, and pamphlets which are printed for the principal purpose of advertising or promoting the sale of goods or services.

We believe the neck hangers which are listed as items 3 and 4 are brochures whose principal purpose is advertising or promoting the sale of the bottles upon which they are placed, thus we believe they are printed sales messages. On the other hand, we do not believe items 1, the charity designation form, and 7, the pocket planner, are printed sales messages.

In order for the sale of printed sales messages to qualify for exemption, the seller must deliver them to “any other person at no cost to that person who becomes the owner of the printed material.” “Any other person” as defined in Sales and Use Tax Regulation 1541.5(a)(6) is a person other than the purchaser or the purchaser’s agent. Since the purchaser of the neck

hangers places them on the bottles, the sale of the neck hangers would not be exempt under the exemption provided for the sale of printed sales messages.

If you have any further questions regarding this, please do not hesitate to write again providing facts specific to the transaction.

Yours very truly,

Ronald L. Dick
Senior Tax Counsel

RLD:cl

cc: Riverside District Administrator
K. M. Ingram (Return Analysis Section - MIC:35)