

**STATE BOARD OF EQUALIZATION**

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October 31, 1990

Ms. J--- S---
D--- M--- C---, Inc.
dba M--- D---
XX --- Bay
--- ---, CA XXXXX

Dear Ms. S---:

This is in reply to your July 31, 1990 letter regarding the application of sales tax to charges involved with the production and distribution of catalogs by M--- D---. You explained the following facts:

“M--- D--- is a ‘dba’ of D--- M--- C---, Inc., a Delaware corporation (hereinafter referred to as D---). D--- is solely owned and operated by a husband and wife team. (In addition to M--- D---, D--- has recently also began doing business as P--- STUDIOS. This division of D--- is the in-house photography studio for M--- D---).

“M--- D--- is a full service publishing agency, the staff of which includes account executives, art directors, photographers, stylists, and copy writers. M--- D---’S primary business purpose is to coordinate, and participate in, the production of advertising campaigns for major shopping centers throughout the United States. Such ‘campaigns’ include catalogs, posters, brochures and postcards.

“Prior to the production of any of these items, a representative of M--- D--- submits a proposal to the marketing director of a particular Mall. The marketing director then reviews the proposal, and if the cost figures and creative ideas are accepted, the M--- D--- produces the requisite advertising ‘campaign’ agreed upon.

“With respect to advertising catalog’s (the bulk of M--- D---’S business) each merchant in the mall is then contacted by phone and/or by letter) and the specifics of their purchase of advertising ‘space’ within the catalog is agreed upon. M--- D--- then designs the layout of a particular ad (and the front and back covers of a catalog), hires the models, collects the items, and arranges each advertisement to be photographed. M--- D--- previously contracted with outside PHOTOGRAPHY agency’s as independent contractors, to photograph each advertisement, but as noted above, now uses the services of P--- STUDIOS. The ‘proofs’ of that particular merchant’s advertising are then sent to the respective merchant for final approval.

“After final approval, M--- D--- uses the ‘proofs’ to create ‘boards’. These ‘Boards’ (and the ‘proofs’ from which they were created) are then sent to various COLOR SEPARATORS which M--- D--- hires on an independent contractor basis. After separated and reviewed by M--- D--- the now color separated ‘boards’ are sent to various PRINTERS. These PRINTERS, which similarly are hired by M--- D--- on an independent contractor basis, then produce a mail-able catalog from the ‘boards’ provided by M--- D---.

“As you might expect, some of the PRINTERS hired by M--- D--- directly mail the completed catalog’s through the U.S. Mail, and others send catalog’s to a mailing house which then mails them thru the U.S. Mail or common carrier. Approximately 98% of all catalogs produced by M--- D--- are sent in one of these two way (directly or by mailing house). The remaining 2% are sent to the Mall itself.

“In the past, the PRINTERS have not charged M--- D--- for their services (except for the 2% of catalogs which have been sent directly to the Mall). I am not aware (because I only been with M--- D--- a short time) of past practices with respect to PHOTOGRAPHERS and COLOR SEPARATORS.”

Given this information, you asked the following specific questions:

“(1) As noted above, PRINTERS have not previously charged M--- D--- sales tax. Is this correct pursuant to Regulation 1541.5?”

The sales tax is imposed upon retailers at the applicable percent of the gross receipts from all retail sales of tangible personal property in the state. (Rev. & Tax. Code § 6051.) The Board's legal staff has long held that, when a person contracts to publish a booklet for an organization (e.g., the Mall, in the case) and agrees to obtain reimbursement for the publication costs by selling advertising space, the transaction between the publisher and the organization is a sale of tangible personal property. The amounts paid by the advertisers constitute taxable gross receipts from the retail sale of the booklets. See Sales and Use Tax Annotation 495.0060 (Bus. Taxes Law Guide, p. 3371.) Therefore, under the facts you provide, it is our opinion that M--- D--- makes a retail sale of the catalogs, posters, brochures, and post cards to the Mall. The total gross receipts of the sale include the amounts which M--- D--- collects from the Mall and the merchants which advertise in the printed matter.

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.) Since M--- D--- makes a retail sale of the printed matter to its customers, the sale of the printed matter to M--- D--- by the printer is a nontaxable sale for resale. Enclosed is a copy of Sales and Use Tax Regulation 1668, Resale Certificates. M--- D--- should issue a resale certificate in the form provided at subdivision (b)(2) of the regulation to the printers.

"(2) Are the two enclosed 'Tax Exempt Certificates' the only necessary documentation required to remain exempt (as to the PRINTERS production of the catalog's). Are these forms correct, and if not, why not?"

As noted above, you should issue resale certificates to the printers. The sample tax exemption certificates you sent are the form of certificate which M--- D--- should accept from its customers when M--- D---'s sale of printed material is exempt from tax pursuant to Sales and Use Tax Regulation 1541.5, Printed Sales Messages, which provides at subdivision (b) that 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 materials."

The sample brochures you sent qualify as "printed sales messages" as defined at subdivision (a)(1) of Regulation 1541.5. If M--- D---, M--- D---'s agent, or a mailing house acting as the agent for the purchaser mails or delivers the printed sales messages through the United States Postal Service or by common carrier to persons other than the Mall or advertisers at no cost to those persons who become the owner of the printed material; for example, the

public, M--- D---'s sale is exempt from tax. Based on the information you provided, we understand that M--- D--- has approximately 98 percent of the catalogs sent through the United States mail or by common carrier to potential Mall customers. The remaining two percent of the catalogs are sent to the Mall. Sales tax applies to M--- D---'s sale of the catalogs sent to the Mall. The application of tax is the same to M--- D---'s sales of posters, brochures, and post cards, assuming that such printed matter qualifies as "printed sales messages" as defined in Regulation 1541.5

"(3) Please clarify what other necessary documentation M--- D--- must keep and whether or not M--- D--- must pay tax to other services necessary to produce catalogs – the PHOTOGRAPHERS; the COLOR SEPARATORS?"

Sales tax applies to sales to M--- D--- of photographs and color separations which M--- D--- purchases to use in the production of the printed matter unless M--- D--- sells the photographs or color separations prior to use. For you further information, enclosed is a copy of this Board's Pamphlet No. 37, Tax Tips – The Graphic Arts Industry.

"(4) Should PREMIERE STUDIO'S be taxed, or charge tax to M--- D--- with respect to services and supplies produced to M--- D---?"

If Premiere Studios is a corporation separate and distinct from M--- D---, sales by Premiere Studios to M--- D--- would be subject to sales tax. This is true even though P--- Studios is wholly owned by the same owners as M--- D---. (Rev. & Tax. Code § 6005.)

"(5) How do the Sales and Use Regulations apply to M--- D---'S production of posters, brochures, and postcards?"

As noted above, assuming the posters, brochures, and post cards are printed sales messages, the application of tax to the sales of such printed matter is the same as the application of tax to the sales of the catalogs.

"(6) It is my understanding that the most recent applicable Regulations were revised. Are there more recent relevant amendments?"

The enclosed copy of Pamphlet No. 37 contains the latest revisions to Sales and Use Tax Regulations 1541 and 1541.5. For your further information, we are enclosing a copy of Pamphlet No. 38, Tax Tips – Advertising Agencies. We are unable to locate a record of a seller's permit in the name of M--- D---; D--- M--- C---, Inc.; or P--- Studios. Unless it has already done so, M--- D--- should contact its nearest State Board of Equalization office to obtain a seller's permit.

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

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

Encs.