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LEGAL DIVISION – MIC: 82
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (916) 324-2655
FAX (916) 323-3387

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October 30, 1995

J--- W. C---
D---, W---, P--- & H---
XXX ---1 ---, Suite XXXX
P.O. Box XXXX
---, CA XXXXX-XXXX

**Re: H--- P--- Company
SR -- XX-XXXXXXXX
Sales and Use Tax Regulation 1541.5**

Dear Mr. C---:

This is in response to your letter of May 16, 1995. You requested our opinion in regard to the application of sales tax to your client H--- P--- Company's sale of printed materials. You stated:

"H--- P--- Co. is in the commercial printing business. As part of its work it prints advertising pieces, at the request of various retailers, that become inserts for, or component parts of, written materials that are more than 90% advertising. The written materials are delivered to various newspapers who either deliver or mail them to subscribers and non-subscribers of the subject newspaper. These written materials printed by H--- P--- Co. do not come into the possession of the purchasing retailer.

"It is the position of H--- P--- Co., that the above-mentioned materials fall within the exemption of Revenue & Taxation Code Section 6379.5, covering 'Printed Sales Messages'. The factual situation seems to conform to the underlying regulation for the Code section, 1541.5, in example (d)(7), exempting the portion of advertising catalogs distributed without the taking of possession by the purchaser."

The term "advertising pieces" is unclear to us. We assume, for the purposes of this response, that the advertising pieces are printed materials whose principal purpose is the promotion of the sale of goods or services for the advertiser. It is also unclear how your client forwards the advertising pieces to the newspaper and how the newspaper delivers the advertising pieces to its subscribers and non-subscribers. We will discuss several possibilities below. We also assume that the advertising items are not delivered to the recipients in a manner that the recipients are regarded as paying anything for the items.

Revenue and Taxation Code Section 6379.5 provides as follows:

“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.”

Although the advertising pieces are printed to the special order of the purchaser for the principal purpose of promoting the sale of goods or services and delivered by the seller or the seller's agent to the recipient at no cost, in order for their sale to qualify for the “printed sales messages” exemption they must be mailed or delivered by common carrier at some stage of the transaction. (Reg. 1541.5(b).) If the advertising pieces are delivered to the newspaper by common carrier, this satisfies the common carrier requirement regardless of the manner of the newspaper's delivery to the donees. If the newspaper delivers the advertising pieces to the recipients by common carrier (such as mail), then the common carrier requirement is also satisfied. However, if the advertising pieces are not delivered to the newspaper by common carrier (e.g., if delivered by the seller's own facilities) and then are not delivered by the newspaper by common carrier (e.g., if delivered by newspaper carriers), the common carrier requirement is not satisfied and the sale of the printed sales messages is subject to sales tax.

You cited the example discussed in subparagraph (d)(7) of Regulation 1541.5 to support your client's conclusion that the sale of the “advertising pieces” is exempt from tax. Subparagraphs (d)(6) and (d)(7) of the regulation state as follows:

“(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.

“(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.”

As you apparently understand, the sale of printed sales messages cannot qualify for the exemption if the purchaser takes possession of them at any time, even if they are thereafter distributed to persons at no charge. Subdivision (d)(7) of Regulation 1541.5 applies the rule that a portion of the sale of printed sales messages may qualify for exemption while that portion delivered directly to the purchaser does not qualify, even if the purchaser thereafter gives the printed sales message away free. You have not provided us sufficient information for us to determine the applicability of this provision to H---'s transactions.

If you have further questions, feel free to write again. If you do so, please provide a step by step description of the transaction and copies of the relevant contracts.

Sincerely,

Anthony I. Picciano
Staff Counsel

AIP:cl

cc: --- District Administrator