



STATE BOARD OF EQUALIZATION

LEGAL DIVISION – MIC: 85
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (916) 324-2655
FAX (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

BRAD SHERMAN
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

E. L. SORENSEN, JR.
Executive Director

February 27, 1996

X-----

Re: X-----

Sales & Use Tax Regulation 1541.5

Dear X-----,

This letter is in response to your correspondence dated December 18, 1995. In that letter you state:

"This letter is written on behalf of X----- . They are an advertising agency at X----- .

"The purpose of this letter is to request a ruling on the application of Regulation 1541.5 'Printed Sales Messages.'

" X----- acts as agent for their client X----- for the sale of printed matter. The printer prepares the printed matter. Please see enclosed samples. As far as the printer is concerned, the printer's finished product consists of a continuous form of single sheets that contain a printed sales message and an order form on the same sheet. These sheets are then shipped by the printer to a mail house selected by the agency for mailing house services. The mail house is a separate business entity from the printer.

"The mail house performs the usual tax exempt services described in Regulation 1504 'Mailing Lists and Services' and sends the mailing to the public that it is intended for through the United States Postal Service or common carrier.

"However, as part of the mail house services, the mail house also cuts the sheets apart at the dotted lines which separates the sales letter from the order form.

"It seems that under these circumstances, the output from the printer qualifies as a tax exempt printed sales message. The agency could safely give the printer an exemption certificate as specified by Regulation 1541.5 (c). It also seems that the services performed by the mail

house to cut apart and separate the order form from the sales letter is a taxable service to the mailing house.

"Please let me know if you agree with this analysis. Any additional comments or suggestions that you may have will be most welcome."

You state that X----- acts as an agent for X----- for the sale of printed matter. Further, you conclude that could safely issue an exemption certificate .as specified in Regulation 1541.5(c). We do not agree that X----- could issue an exemption certificate as you describe the facts above. However, X----- could issue an exemption certificate as and for X----- if it establishes that it is acting as an agent for X----- the particular purchase. Specifically, it must clearly disclose to the seller that it is acting as agent for X----- obtain, prior to the purchase, and retain written evidence of the agent status with X-----, and the price billed to X----- must be the same as the amount charged by the printer exclusive of any agency fee. Further, X----- may make no use of the property so purchased. Lastly, X----- should separately invoice the reimbursement for the printed matter. Further, the same rules apply to the issuing of an exemption certificate as those which apply to a resale certificate. That is, the advertising agency that purchases tangible personal property on behalf of its client may not issue an exemption certificate to the supplier. It will be presumed that an advertising agency who issues an exemption certificate to its supplier is purchasing the tangible personal property on its own behalf and is not acting as an agent for its client. (Sales and Use Tax Reg. 1540 (a) (2) (A) .) Having said that, and assuming that X----- complies with the above requirements, we now turn to the questions that you raised.

As you know, 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 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.

The document that you provided as an example of the printed material X----- purchases on behalf of X----- contains sales information about different types of computer programs produced by the X----- . It also contains an application; however, it appears to be principally a printed sales message. Considering that, the document satisfies the definition of a printed sales message in that its primary purpose is the promotion of the sale of goods or services. The document is delivered to a mailing house without X----- gaining possession, mailed through the United States Postal Service to people who, we presume, receive them at no cost and who become the owners of the documents; therefore, the sale of the document is exempt from sales tax. X----- acting as an agent on behalf of X----- may submit to the printer X----- Exemption Certificate in the form provided at Regulation 1541.5(c).

Section 6051 of the Revenue and Taxation Code imposes a sales tax on retailers for the privilege of selling tangible personal property retail in California. The measure of tax is based on gross receipts from the retail sales in this state of tangible personal property. A sale means and includes, producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting. (Rev. & Tax. Code § 6006(b).)

Taxable gross receipts include charges for services that are a part of the sale, such as overtime and set-up charges and charges for die cutting, embossing, and folding (except for folding in preparation for the purpose of mailing). Tax applies to charges for printed matter furnished to a customer by a person engaged in the business of providing mailing services to the same extent as to charges for printed matter generally, even though the printed matter is to be mailed. (Sales & Use Tax Reg. 1504(C) (1).)

In this case, the mailing house performs the function of cutting apart and separating the order form from the sales letter which results in two separate pieces of tangible personal property, i.e., the printed sales message and a document which appears to be an application for the purchase of the goods that are advertised. Since the mailing house is fabricating tangible personal property supplied by and for X----- that fabrication is a sale subject to sales tax.

In sum, we agree with your analysis of the application of Sales and Use Tax Regulation 1541.5 as well as your analysis that the fabrication performed by the mailing house is subject to sales tax.

I trust that this information satisfies your requirements. However, if you have need for additional information, please do not hesitate to write again.

Yours very truly,

Anthony I. Picciano
Staff Counsel

AIP:cl

Cc: X----- District Administrator.

December 18, 1995

432.0041

Mr. Ronald L. Dick
Senior Tax Counsel
STATE BOARD OF EQUALIZATION
P.O. Box 942879
Sacramento, CA 94279-0001

Dear Mr. Dick:

This letter is written on behalf of X------. They are an advertising agency at X-----.

The purpose of this letter is to request a ruling on the application of Regulation 1541.5 "Printed sales Messages."

X----- acts as agent for their client X----- for the sale of printed matter. The printer prepares the printed matter. Please see enclosed samples. As far as the printer is concerned, the printer's finished product consists of a continuous form of single sheets that contain a printed sales message and an order form on the same sheet. These sheets are then shipped by the printer to a mail house selected by the agency for mailing house services. The mail house is a separate business entity from the printer.

The mail house performs the usual tax exempt services described in Regulation 1504 "Mailing Lists and Services" and sends the mailing to the public that it is intended for through the United States Postal Service or common carrier.

However, as part of the mail house services, the mail house also cuts the sheets apart at the dotted lines which separates the sales letter from the order form.

It seems that under these circumstances, the output from the printer qualifies as a tax exempt printed sales message. The agency could safely give the printer an exemption certificate as specified by Regulation 1541.5 (c). It also seems that the services performed by the mail house to cut apart and separate the order form from the sales letter is a taxable service to the mailing house.

Please let me know if you agree with this analysis. Any additional comments or suggestion that you may have will be most welcome.

Sincerely yours,

X-----