

**STATE BOARD OF EQUALIZATION**

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January 8, 1990

Mr. --- J. W---
Vice President, Finance
G--- R--- and S---
XXXX --- ---
--- ---, CA XXXXX

RE: C--- P---
dba R--- P--- H--- V---
S- -- XX-XXXXXX

Dear Mr. W---:

Your letter of October 23, 1989 has been referred to the legal staff for reply. You explained that you are currently involved in several large printing projects for R--- P---, H--- V--- D--- (R---). You are seeking an opinion as to whether the printed materials qualify as nontaxable printed sales messages under Sales and Use Tax Regulation 1541.5, Printed Sales Messages, a copy of which is enclosed.

Enclosed with your letter were examples of the following six categories of printed matter:

1. Brochures. The brochures advertise the availability of new videocassettes for sale.
2. Letters, Flyers. These items promote the sale of videocassettes to retailers for subsequent sale or rental to consumers.
3. Post Cards. Post cards promote the sale of a particular videocassette.
4. Presentation Folders. The folders contain pockets inside. You note that the folders are used as "containers" for advertising and other literature promoting the sale of specific videocassette titles.

5. One Sheet Posters. These are posters that promote a motion picture on videocassette. I assume that the posters are displayed in videocassette rental stores.
6. Catalogs. The catalogs contain a comprehensive listing of videocassette titles that are available for sale. Each title listed in the catalog is accompanied by a brief description of the movie, names of star actors, etc.

Your letter explained that all of the above referenced printed matter is delivered by your firm to "fulfillment houses" which then package and ship the materials to distributors by common carriers. These distributors then further distribute the materials directly to the videocassette retailers. In all cases, the materials are delivered to the ultimate recipient free of charge, and the purchaser, R---, never takes possession of the material.

Revenue and Taxation Code section 6379.5 provides the exemption from sales and use tax for the sale of printed sales messages. Subdivision (a) of Regulation 1541.5 defines a printed sales message to be a catalog, letter, circular, brochure, or pamphlet, printed for the principal purpose of advertising or promoting goods or services. Subdivision (b) of the regulation provides that tax does not apply to 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 material.

You asked that we confirm that the above listed six types of materials are printed sales messages, that the "fulfillment house" is equivalent to a mailing house, and that the method of distribution utilized by R--- is consistent with the delivery provisions of Regulation 1541.5.

After examining the six types of printed material that you submitted, we are of the opinion that all of them qualify as printed sales messages except for the presentation folders. The folders are made of heavy paper which is folded and glued so as to form two inside pockets. The cover of the folder is printed with an R--- logo and the title logo of a motion picture. We do not believe that the presentation folders qualify as printed sales messages. Your letter notes that the folders with pockets are used as "containers" for advertising and other literature promoting the sale of specific videocassettes. Subdivision (b)(7) of Regulation 1541.5 provides that, "tax does not apply to charges for containers, such as envelopes or wrapping paper when sold with the printed sales messages for shipment or delivery..." If you, in fact, sell the folders as containers of the printed sales messages for shipment or delivery, tax would not apply to the sale of the folders if the sale of the contents qualifies as an exempt sale of printed sales messages.

Whether or not you sell the folder as containers is a matter of fact. For example, if you sell only one piece of literature, then we believe that the folders are not "containers sold with the printed sales messages for shipment or delivery." Rather, we believe that the presentation folders are novelty items, the sale of which is subject to tax.

Based on the information provided in your letter, we believe that the "fulfillment houses" fall within the definition of mailing house provided in subdivision (a)(3) of the regulation; that is, they are engaged in the business of stamping, addressing, sealing, or otherwise preparing property for mailing for compensation. The distribution method utilized by the purchaser conforms to the delivery requirements of subdivision (b) of the regulation. Consequently, your sales of the above referenced brochures, letters, flyers, post cards, posters, catalogs, and containers sold with such property for shipment or delivery, printed by your firm for R--- are exempt from tax.

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

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD:sr

Enc.