

# Memorandum

432.0050

To: Mr. Rick Zahm  
Out-of-State Sacramento District Office - OH

Date: April 6, 1994

From: Ronald L. Dick  
Staff Counsel

Subject: X-----

This is in reply to your February 10, 1994 Mini-Memo regarding whether game cards qualify as printed sales messages for purposes of Sales and Use Tax Regulation 1541.5. A photocopy of both sides of the game card is attached.

The statutory basis for Regulation 1541.5 is Revenue and Taxation Code section 6379.5, which provides:

"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.**" (Emphasis added.)

The game cards have only a small X----- logo and a X----- logo and, in the fine print, mention X----- and X----- and that one of the game prizes is a soft drink. We believe it is clear that the game cards do not consist substantially of printed sales messages. Although game cards are not specifically excluded from the term "printed sales messages" in Regulation 1541.5 at subdivision (a), we believe they are excluded from the term for the same reason as calendars on which are printed an advertisement. Although the purchaser's subjective intent in having the items printed may be to get the sponsor's name publicized, the calendars and game cards do not "consist substantially of printed sales messages" as required by the statute.

RLD:plh

Attachment – Game Card