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September 24, 1997

Ms. P--- L---V---, Credit Manager
C--- P---
P. O. Box XXX
--- ---, CA XXXXX

**Re: C--- P--- Inc.
Account No. SR -- XX-XXXXX**

Dear Ms. L---V---:

This is in response to your letter dated July 17, 1997 regarding the application of tax to your printing of a product you call the "Contempo Realty Map." You state:

"This product is published by our customer and given to Contempo Realty (Century 21) free of charge, to be distributed to potential real estate buyers.

"A portion of the brochures were picked up by our customer at our vendor where they were being folded. These were taken directly to a Century 21 office. These were picked up by our customer since they were in a rush to have as many completed copies as they could get. Upon completion of the total job, the balance of the brochures were delivered by our truck to the same Century 21 Real Estate office."

You enclosed a sample of the product with your letter. The product is entitled "Official Map of San Ramon, Danville, Alamo, and Blackhawk," and is in the foldout form typical of many maps. In addition to three different maps showing the area in varying detail, and written information about the area communities, the "Official Map" contains advertisements, in business-card-sized boxes, for over seventy businesses. The map measures approximately twenty-five inches by thirty-six inches. Most of the surface area, front and back, consists of maps and written information about the area--a section measuring approximately nineteen inches by thirty inches on one side, and a section measuring approximately nineteen inches by thirty-four inches on the other side, consists of the maps and other written information, and only the remaining portion on each side consists of the business-card sized boxes.

When I spoke with you over the telephone earlier this month, you stated that the customer who orders printing from you is the publisher, who sold the advertising space to the

companies advertising on the maps. The “vendor” to which you refer in your letter is a company you hire to fold the maps. You stated that Century 21 gives the maps to potential home buyers free of charge, in order to help them locate homes for sale in the area.

As you know, retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) A retailer may collect reimbursement from its purchaser for its sales tax liability if the contract of sale provides for such reimbursement. (Civ. Code § 1656.1.)

Under Regulation 1541, which explains the application of tax to printing, your company’s sales of products it prints are subject to tax, unless the sales are for resale or are exempt from taxation. Your customer, the publisher, does not resell the maps--sales by publishers of advertising space on maps do not constitute sales of tangible personal property. (Business Taxes Law Guide Annotation 540.0020 (10/8/62).) This means that C--- P--- is liable for sales tax with respect to its sales of the maps, unless an exemption applies.

The maps do not qualify as periodicals (see Rev. & Tax. Code § 6362.7 and Reg. 1590(a)(1) and (a)(2)); thus, it appears that the only exemption relevant to the situation at issue is the exemption from tax for certain sales and uses of printed sales messages under Revenue and Taxation Code section 6379.5, as explained in Regulation 1541.5. A printed sales message is defined as a catalog, circular, brochure, or pamphlet printed for the principal purpose of advertising or promoting goods or services. (Reg. 1541.5(a).) The exemption applies only if the printed sales messages are 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 person other than the purchaser at no cost to that person who becomes the owner thereof. (Rev. & Tax. Code § 6379.5, Reg. 1541.5(a)(6).)

You have indicated that the maps are provided to the special order of your customer. You stated over the telephone that the maps are given by the real estate company to potential purchasers of homes in order to help the potential purchasers locate homes for sale in the area detailed in the map, and in order to inform them about local businesses. We determine whether an item such as a map (which would generally qualify as a “circular” for purposes of this analysis) is printed for the principal purpose of advertising or promoting goods or services by looking at the item and measuring it, if necessary, in order to ascertain whether more than 50% of the item consists of advertising. The main portion of the map product you provided consists of maps and written information about the area. Only a small portion contains advertisements. Since the map does not consist of over 50% advertising, it is not for the principal purpose of advertising or promoting the sale of goods and services, and, therefore, it does not qualify as a printed sales message within the meaning of Regulation 1541.5(a)(1). (Business Taxes Law Guide Annotation 432.0012.875 (11/2/93).) As such, the section 6379.5 exemption does not apply.

Further, in order for the sale of the maps to be exempt from tax under section 6379.5, they must be mailed or delivered through the United States Postal Service or by common carrier. You state that C--- P--- delivered some of the maps by its own trucks to the Century 21 office, and that other maps were delivered by C--- P--- to the folding house, where the publisher picked them up.

The purchaser cannot take physical delivery of the maps if the maps are to be considered exempt from tax as printed sales messages. (Reg. 1541.5(a)(6).) Therefore, the maps the publisher picked up at the folding house cannot qualify as printed sales messages exempt from tax under section 6379.5. With respect to the maps delivered in C--- P---'s own trucks, you have not provided information showing that the U.S. Postal Service or a common carrier is involved in the delivery.

For the reasons stated above, C--- P---'s sales of the maps do not qualify for exemption from tax as printed sales messages under section 6379.5. Thus, C--- P--- is liable for sales tax with respect to its sales of the maps. Of course, C--- P--- may collect reimbursement for its sales tax liability from its customer, if its contract of sale provides for such reimbursement.

If you have further questions, please feel free to write again.

Sincerely,

Kelly W. Ching
Tax Counsel

KWC:rz

cc: --- --- District Administrator (--)