

**STATE BOARD OF EQUALIZATION**

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May 17, 1996

Mr. C--- H. G---, Jr.
R--- S--- & Company
XXX --- Street
--- ---, CA XXXXX

Re: Sales & Use Tax Regulation 1541.5

Dear Mr. G---:

This is in response to your letter of January 26, 1996, in which you seek clarification on the application of sales and use tax to sales of certain printed materials. In your letter you state:

“R--- S--- & Co. is seeking clarification on the application of sales and use tax on the enclosed materials. All of the enclosed materials are printed in California by commercial or financial printers and delivered directly by the printers to a fulfillment mail house located in California. These materials are printed to the special order of R--- S--- & Company. These items are then mailed by the fulfillment house through the United States Postal Service to clients and potential clients that reside 50% in state (California) and 50% out of state. There is no cost to clients or potential clients for the receipt of these materials.”

You enclosed a number of documents which I shall identify as follows:

- Item A: Item A is a postcard-type self-mailer which describes the R--- S--- V--- P--- Growth Fund.
- Item B: Item B appears to be an outside envelope with the words “Fund Info” printed on it as well as the R--- S--- Mutual Funds return address.

- Item C: Item C is a group of pamphlets which is comprised of an annual report dated March 31, 1994, a quarterly report dated June 30, 1994, a semi-annual report dated September 30, 1994, a quarterly report dated December 31, 1994, an annual report dated March 31, 1995, a first quarter report dated June 30, 1995, and a semi-annual report dated September 30, 1995. Each of these pamphlets are descriptive of the activities regarding the "E--- Growth Fund."
- Item D: Item D is a prospectus for the R--- S--- Mutual Funds.
- Item E: Item E is a brochure describing the R--- S--- I--- A--- Fund.
- Item F: Item F is a reply envelope.
- Item G: Item G is an investment management account application form.
- Item H: Item H is a letter-size envelope containing a return address for R--- S--- I--- M---

Section 6051 of the Revenue and Taxation Code imposes sales tax on retailers' retail sales of tangible personal property in this state unless the sale is specifically exempt from tax by statute. The measure of tax is the gross receipts from the retail sales in this state of tangible personal property. When sales tax does not apply, use tax applies to the use in California of tangible personal property purchased from a retailer for use in California, unless the use is specifically exempt from tax by statute. (Rev. & Tax. Code §§ 6201, 6401.)

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 who 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 "self mailer" you provided listed as Item A is a postage paid post card that contains information on both sides promoting the sale of the "V--- + G--- Fund." It is a "printed sales

message” because its principal purpose is that of promoting the sale of goods or services. The “brochure” (Item E) is a document that contains sales information about “The R--- S--- I--- A--- Fund” and satisfies the definition of a printed sales message in that its primary purpose is the promotion of the sale of goods or services. The Board’s legal staff has previously taken the position that a prospectus (Item D) is a “printed sales message” finding that such materials are printed for the primary purpose of promoting the sale of goods or services. Each of the materials discussed in this paragraph satisfy the other requirements for their sale to be exempt from tax because they are delivered to a mailing house without your gaining possession, mailed through the United States Postal Service, and received by a donee at no cost to that person who becomes the owner of the printed materials.

Tax does not apply to charges for containers, such as envelopes, when sold with the printed sales messages for shipment or delivery, or when sold to persons who place the printed sales messages in the container and sell the printed sales messages together with the container. (Sales and Use Tax Reg. 1541.5(b)(7).)

If the “outside envelope” (Item B) is used to package all of Items C, D, E, F, and G for mailing and it is sold with those items its sale would satisfy the requirements for the exemption since it is sold with the printed sales messages (Item D and Item E) for shipment or delivery of the printed sales messages. On the other hand, if the “outside envelope” is purchased from one source while the printed sales message is purchased from another, its sale would be subject to tax. Further, the sale of the outside envelope is subject to tax if it is not used to ship or deliver printed sales messages.

We are not sure of your use of the letter size envelope (Item H). Assuming it is sold with a printed sales message such as the brochure, for shipment or delivery, the application of tax is the same as to the sale of Item B, discussed above.

Subparagraph (b)(8) of Sales and Use Tax Regulation 1541.5 (copy enclosed) provides generally that tax applies to sales of reply envelopes and order forms unless they are sold as a component or integral part of the printed sales message. Hence, in order for the sale of the reply envelope (Item F) to be exempt from sales tax, the reply envelope must be stapled, glued or otherwise affixed to the printed sales message and sold together with the printed sales message. We assume the mailing house ships the printed materials to the donees in the form you sent it to us, that is, the materials are not affixed to each other but are loosely inserted into the “outside envelope.” If the “reply envelope” (Item F) is not glued or stapled or in some way affixed to the printed sales message, the sale of the envelope does not qualify for the exemption. The same analysis applies to the “application” which you provided which is listed as Item G.

The group of documents in Item C are statements of financial condition which provide a “track record” of performance of the E--- G--- Fund and include disclaimers about future

performance. These documents are not “printed sales messages” since their principal purpose is not that of advertising or promoting sales of goods or services. Therefore, their sale, absent another applicable exemption is subject to sales tax.

There are exempted from sales and use tax the sale and use of newspapers or periodicals that are distributed without charge and regularly issued at average intervals not exceeding three months, and component parts of such newspapers and periodicals. (Rev. & Tax Code § 6362.7(a).) For the purposes of section 6362.7, a "periodical" is any publication that appears at stated intervals at least four times per year, but not more than 60 times per year, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them. Each issue must be sufficiently similar in style and format to make it evident that it is one of a series. The term does not include printed sales messages, shopping guides, or other publications of which the advertising portion, including product publicity, exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period. (Rev. & Tax. Code § 6362.7(c).)

The quarterly, semi-annual, and annual reports are reports of the financial activities of the E--- G--- Fund during the period reported and are cumulative in nature providing information in regard to that fund over the span of a year. They contain news or information of general interest to the public or to a segment of the public. Although you change the title of successive issues to relate to the period for which it is issued (e.g., “Quarterly Report,” “Semi Annual Report”), each issue is one of a series, bears a relationship to each other issue, is similar in subject matter to the other issues, and is similar in style and format to other issues. Hence, we believe the reports qualify as periodicals. Since you distribute the periodicals without charge, the sale of the periodical to you is exempt from tax.

The sale of tangible personal property is exempt from sales tax if the retailer, as required by the contract of sale, ships property outside California by means of the retailer’s facilities or by delivery to a common carrier or to a forwarding agent whether hired by the purchaser or not for shipment to the out-of-state point. A forwarding agent is a person or firm regularly engaged in the business of preparing property for shipment. (Sales and Use Tax Reg. 1620(a)(3)(B).) If, however, the property is delivered to the purchaser or the purchaser's representative in this state, sales tax applies whether or not the purchaser immediately transports the property to an out-of-state point. (Sales and Use Tax Reg. 1620(a)(3)(A).)

Notwithstanding the other applicable exemptions noted above, the sale of the fifty percent of all printed materials which are sent out of state may also be exempt. We note that fifty percent of the printed materials is mailed to clients outside the state of California by the

mailing house. We assume that your contract for sale requires shipment of that printed matter to an out-of-state point. We also note that you hire a forwarding agent (mailing house) who ships the printed matter out-of-state. Therefore, since we have assumed that you have a contract which requires the seller to ship the printed materials out of state and you hire a forwarding agent for that delivery, the sale of that fifty percent is exempt from tax since all the requirements for the interstate commerce exemption are met.

If the assumptions made herein are incorrect, then the information provided does not apply. If you have any further questions in regard to the matters addressed herein, please do not hesitate to write again.

Yours very truly,

Anthony I. Picciano
Staff Counsel

AIP:cl

Enclosure (Reg. 1541.5)

cc: San Francisco District Administrator