

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

June 28, 1991

Mr. J--- A. H---, Jr.  
The D--- & B--- C---  
XXX --- Avenue  
--- ---, -- XXXXX

Dear Mr. H---:

This is in reply to your letter dated June 10, 1991, addressed to Mr. Ronald Dick. Your letter was received in Sacramento on June 25, 1991.

One of your subsidiaries, D---'s M--- S---, Inc. (DMS), is being audited by this agency. Our auditor agreed with you that a letter from this office would be helpful in resolving one issue.

The issue concerns the taxability of mailing labels. DMS sells mailing labels and has the customer sign a contract agreement. Under paragraph 3 concerning restrictions on use, the contract specifically states, "The customer agrees that all pressure sensitive or Cheshire mailing records on which the information may be provided may be used once and may not be duplicated in whole or in part in any form or manner whatsoever."

The auditor has noticed on some invoices, the words "Duplicate" or "Reuse" was printed in the explanation. You explained that the list of labels was from a similar group of parameters ordered prior to this request; for example, a list of doctors in the Sacramento area. You explained it did not give the customer the right to use the names more than once.

Our Regulation 15034(a)(3) provides, in relevant part, as follows: Tax does not apply to charges for the transfer or use of mailing lists, where a contract restricts the transferee or user to use of the mailing list one time only. The charges in such cases are considered to be for information or addressing services.

We are in agreement with your contention that it does not necessarily follow that a subsequent licensing of a mailing list for use by the same customer disqualifies the first licensing or the second licensing from nontaxability. The terms of each agreement are specific with respect to

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each licensing and must be given their own effect, absent some clear showing that the separate licensings were an artifice designed to evade tax - - which is not the case here. The separate character of each agreement is supported by the fact that the mailing list is dynamic, and changes from transaction to transaction.

In summary, it is our opinion the transactions in question are nontaxable.

Very truly yours,

Gary J. Jugum  
Assistant Chief Counsel

GJJ:sr

bc: --- District Administrator