



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001
TELEPHONE (916) 920 - 7445

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April 27, 1994

BURTON W. OLIVER
Executive Director

X-----

Re: X-----

Dear X-----,

This is in response to your letter dated March 7, 1994 in which you ask if sales of coupons printed and delivered by your client, X-----, are exempt under Revenue and Taxation Code section 6379.5.

It is your understanding X----- is registered with the California Public Utilities Commission as a common carrier and conducts services as a common carrier. As part of its business, it delivers telephone directories to telephone company customers inside and outside of California. The directories are delivered to X----- warehouses in various states. X----- generally delivers the directories once a year. However, to service new customers, some directories are stored in X-----'s warehouses to deliver to the telephone company's new customers.

You state X----- is considering a new line of business wherein it will offer to print and deliver discount coupons (copies of which you have enclosed) for various merchants. This business is to be an addition to the existing common carrier business. You further state X----- will sell each coupon to the local merchants at a price of 22 cents which includes 18 cents for "delivery". You also state the coupons will be delivered along with the telephone directories to the telephone company's new customers, at no cost to the new customer. We assume each coupon identifies only one merchant as it does in your sample.

Your letter further states:

“Initially, X----- intends to print the coupons using X----- owned equipment in Merced, but in the future may purchase the printed matter from others.

“Subsequent to printing, coupons representing several merchants will be packaged in an envelope. The packaged; envelopes will then be shipped to X----- satellite locations by means of leased vehicles operated by X----- employees, by the United States Postal

Service ('USPS'), or by United Parcel Service ('UPS'). The envelopes will be placed on top of the directories; both will be packaged in a clear plastic bag. Delivery will then be made to the telephone companies' customers.”

You believe that sales of the coupons qualify for the printed sales message exemption (Rev. & Tax. Code § 6379.5) and that the only issue is whether delivery by X----- complies with the common carrier provision as explained in Regulation 1541.5.

You are correct that Revenue and Taxation Code section 6379.5 provides an exemption for certain sales of brochures, circulars, catalogs, and pamphlets consisting substantially of printed sales messages. In order for the coupons to qualify as a printed sales message as defined in Regulation 1541.5(a) (1), they must be printed for the principal purpose of advertising or promoting goods or services. In other words, more than 50 percent of the coupon must be for the purpose of advertising or promoting goods or services. The examples you enclosed are the size and shape of a currency bill, list the name and address of the business. One offers a 25 percent discount, and the other is an offer by a Nursery for a free plant holder. It is our opinion the sample coupons are for the principal purpose of advertising or promoting goods or services. Based on the facts and assumptions stated herein, if the other coupons you sell similarly advertise or promote goods or services, they too would qualify as printed sales messages. However, in order for the printed sales message exemption to apply the following requirements must be satisfied, as explained in Regulation 1541.5(b) :

“[T]ax does not apply to the sale 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.”

Since you state the coupons are delivered free of charge to the customer and are printed to the special order of the customer, the only question is whether the common carrier provision is satisfied.

“Common carrier” is defined as any person engaged in the business of transporting property for hire and who offers his services to the public indiscriminately or to some portion of the public. (Reg. 1541.5 (a) (4).)

Your letter indicates that X----- is the seller of the printed sales message (the coupons) which it prints in its facilities and then ships to its satellite locations. In some instances X----- will ship the coupons by UPS or USPS either to its satellite location(s) or to the customer, or both. In these situations, the common carrier provision is satisfied. The problem presents itself when the coupons are shipped to the satellite locations via X-----'s own facilities for subsequent delivery to the telephone company's new customers, again via X-----'s own facilities. You believe that since X----- is a common carrier (at least, you

believe X----- is a common carrier) even if it is also the seller it can deliver its own product and still comply with the statute.

The statute makes it clear that the seller or its agent is to arrange delivery by someone other than the seller or the purchaser. The common carrier referred to in the statute cannot be the seller nor the purchaser. To conclude otherwise would circumvent the statute. The Legislature did not intend for different rules to apply to the seller simply because that seller also happens to be a common carrier. If the Legislature had so intended, the statute would have stated so.

You also believe that the statute only demands that the printed sales messages be delivered by a common carrier in some stage of the delivery. We agree that delivery by a common carrier is only required at some point in the delivery. Therefore, if the delivery either to your satellite warehouse(s) or to the customer (or both) is by UPS or USPS that would be sufficient to satisfy the common carrier requirement, even if deliveries through X----- were also involved in addition to deliveries by a common carrier other than X-----.

In summary, based on the assumptions made herein and the information you provided, it is our opinion that the coupons are printed sales messages printed to the special order of the purchaser. Thus, if they are received by any other person at no charge to that person through UPS, USPS, or a common carrier other than X----- at some stage of the delivery, the sales of the coupons are exempt from sales or use tax. On the other hand, if the coupons are delivered by X----- without any other common carrier used at some point in the delivery, the common carrier provision of Regulation 1541.5 is not satisfied and as such the printed sales message exemption does not apply. Sales of such discount coupons are subject to sales tax.

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

Very truly yours,

Rachel M. Aragon
Staff Counsel

RMA/md

Cc: San Francisco – District Administrator