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August 4, 1994

Mr. P--- T. C---
Law Offices of M--- S---
XXXX --- Road, Suite XXX
---, CA XXXXX

Dear Mr. C---:

This is in reply to your June 13, 1994 letter regarding the application of sales tax to charges for printed sales messages under various situations.

You asked that we assume in each case the printed materials qualify as printed sales messages which are printed to the special order of the purchaser and are received by third party recipients at no cost to the recipients, who become the owners of the printed sales messages. We also assume in each situation you note the sale occurs in California, and there are no other steps in the transaction.

Under the first situation you note, the seller delivers the printed sales messages to a contract carrier which delivers them to the third party recipients.

Sales tax would apply to the sale. Revenue and Taxation Code section 6379.5 provides the exemption for the sale of printed sales messages:

“Printed sales messages for goods and services printed to the special order of the purchaser. 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.”

The statute is specific. In order for the exemption to apply, the delivery must be by the seller through the United States Postal Service or by common carrier. If the seller does not employ a common carrier at some stage of the delivery but only delivers the printed sales messages by contract carrier, the exemption does not apply.

Under the second situation you described, the seller qualifies as a common carrier and uses its own delivery trucks to transport the messages directly to the third party recipients.

The statute provides that the delivery must be by the seller by a common carrier; that is, the seller or its agent must arrange delivery by someone other than the seller or the purchaser. The common carrier to which the statute refers cannot be the seller or the purchaser. To conclude otherwise would circumvent the statute. The legislature did not intend for different rules to apply to a seller which happens to be a common carrier. If the legislature had intended such a result it would have so worded the statute.

Of course, our answer is the same to your third situation where the seller is a contract carrier and the fourth situation where the seller is neither a common carrier nor a contract carrier and delivers the printed sales messages to the third party recipients in the seller's own trucks.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:plh

cc: --- District Administrator - --