

**STATE BOARD OF EQUALIZATION**

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November 21, 1991

Mr. W--- G. L---
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XXX --- ---
--- ---, CA XXXXX

Re: P--- P---

Dear Mr. L---:

This is reply to your August 27, 1991 letter regarding the application of sales tax to charges by your client, P--- P--- (P---) under the following facts you provide:

“P--- provides full service printing services to a variety of customers from its California location. For various business reasons, the majority owners of P--- intend to form a general partnership (hereinafter ‘P--- T---’) which will provide common and contract carrier services to P--- and/or many of P---’s customers. P--- T--- will also offer transportation services indiscriminately to the public. P--- T--- is currently seeking the appropriate authority and license from the Public Utilities Commission to operate as an intrastate common carrier. P--- T--- will bill its customers including P---, freight charges consistent with the prevailing market and/or regulated rates.”

You go on to note that a significant portion of the items printed by P--- are shipping guides which meet the definition of “printed sales messages” as provided in Sales and Use Tax Regulation 1541.5. You provided copies of the publications “Tri-City Weekly,” “Wheels and Deals,” “Real Estate Pictorial,” and “Jobs and Careers Magazine.” You sent only the “A Section” of “Wheels and Deals.” We assume that the format of any other sections is such that, taken as a whole, the publication qualified as a printed sales message rather than a newspaper or periodical for the period July 15, 1991 through October 1, 1991, when tax applied to the sale of newspapers or periodicals distributed without charge.

You note that, subsequent to the printing of the items, P--- will engage P--- T--- to deliver the printed sales messages to one or more of the following:

“1) Independent contractors – A third party individual commissioned by the purchaser of ‘Printed Sales Messages’ to deliver such messages to various locations where they are available to the public at no charge. The independent contractor may also deliver the ‘Printed Sales Messages’ directly to certain specified individuals (i.e., homes) at no cost to such individuals. The independent contractor does not become the owner of the ‘Printed Sales Messages’. The independent contractor is not an employee of the purchaser under established Internal Revenue Service guidelines.

2) Delivery Companies – A third party company commissioned by the purchaser of ‘Printed Sales Messages’ to deliver such messages to various locations where they are available to the public at no charge. The delivery company may also deliver the ‘Printed Sales Messages’ directly to certain specified individuals (i.e., homes) at no cost to such individuals. At no point does the delivery company become the owner of the ‘Printed Sales Messages’. The delivery company may or may not be a common carrier as defined in Reg. 1541.5(a)(4).”

We assume that the independent contractor would not qualify as an employee under common law principles as well as Internal Revenue Service guidelines. We also assume that the printed sales messages are delivered directly to the independent contractors or delivery companies rather than to the purchaser for redelivery to the independent contractor or delivery company. Finally, we assume that P--- will make actual payment to P--- T--- for the transportation services. In such case, we agree that the sale of the printed sales messages delivered in accordance with the facts you provided is exempt from sales and use tax.

You also note that, in transactions which do not involve printed sales messages, P--- will engage P--- T--- to delivery the property sold to the purchaser. P--- intends to seek reimbursement from its customers for the amounts charged to it by P--- T--- for delivering the printed matter. Such reimbursement will be separately stated on P---’s invoices to its customers and will not exceed the amount charged by P--- T--- for delivering the property. P--- will not sell the property for a delivered price but will contract to sell the property for a stated price with actual freight prepaid (to P--- T---) and added to the sales price.

We agree with your conclusion that tax does not apply to the separately stated charge made by P--- for the transportation when the property is not sold for a delivered price. A contract is not for a delivered price when the contract for sale provides for the sale of property for a state price with actual freight prepaid and added to the sales price. (Sales and Use Tax Reg. 1628, Transportation Charges, Appendix, (b).)

Mr. W--- G. L---

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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:sr