

**M e m o r a n d u m**

**432.0071.500**

To : Mr. G. Jung  
Oakland - Compliance (CH)

Date: September 26, 1995

From : Anthony I. Picciano  
Staff Counsel

Subject:: **S--- Graphics**  
**SR -- XX-XXXXXX**

This is in regard to your "mini-memo" dated April 26, 1995, which refers to a letter you received from A--- S--- of S--- Graphics dated April 13, 1995.

You requested an opinion in regard to the application of sales tax to the sale of five items that Ms. S--- sent to you which she describes as "a letter, a product card (with the pictures--"Goldpost"), a response device, an outer envelope, and an envelope to send the response device back in." The "response device" is a card upon which a prospective customer provides information to the advertiser to allow it to contact the customer. The "envelope to send the response device back in" is merely a reply envelope.

The taxpayer's customer considers the sale of all of the items listed exempt from sales tax. You agree that the sale of the letter, product card and mailing envelope is exempt from sales tax; therefore, we shall discuss only the response device and the reply envelope.

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. Generally, in order for the sale of a printed sales message to qualify for the exemption, the "printed sales message" must be:

1. Printed to the special order of the purchaser for the principal purpose of promoting goods or services offered for sale;
2. Mailed or delivered by the seller, the seller's agent, or a mailing house acting as an agent for the purchaser, through the United States Postal Service or by common carrier; and,

3. Received by any person, other than the purchaser or purchaser's agent, at no cost to that person who becomes the owner of the printed materials (the donee).

Subparagraph (b)(8) of the regulation provides that tax applies to the sale 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 a reply envelope 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.

I have reviewed the samples of printed matter that S--- submitted to you. S---'s customer believes the reply envelope may qualify as a printed sales message because the logo of the customer is printed on it. We do not believe the printing of a logo on a reply envelope makes the envelope "printed for the principal purpose of advertising or promoting the sale of goods or services." We assume S--- ships the printed materials to the donees in the form you sent it to us; that is, they are not affixed to each other but are loosely inserted into the envelope. In such case, sales tax applies to the sale of the reply envelope.

Both the sides of the response card contain information which one could reasonably construe to be a printed sales message. However, it is a form which a prospective customer fills out it request further information. On the side of the form the customer is to complete, we believe only the paragraph in the colored text box is a sales message. Thus, the printed sales message portion of the card comprises less than 50% of the card's area. The principal purpose of the response card is for the prospective customer to complete and return information to the advertiser. We believe it is in the nature of an order form; therefore sales tax applies to the sale of the response card.

If you have any further question in regard to these matters, please advise.

AIP:es