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August 9, 1993

Mr. H--- B---
A--- M---
XX --- ---
--- ---, CA XXXXX-XXXX

BURTON W. OLIVER
Executive Director

Dear Mr. B---:

This is in response to your letter of January 4, 1993. It did not contain a sample of the tags, envelopes and contents, so we must make certain assumptions that may or may not be true. You ask whether a sales or use tax applies to the purchase of luggage tags under the following facts:

You are an advertising specialties distributor that works with F---, C--- & B--- (F---), a California advertising agency. One of F---'s clients is N---, Inc., a Utah corporation, which I will assume has no contact or "nexus" with California, except its contacts with you and F---.

F--- ordered 170,000 luggage tags from you for N---, without providing you with a resale certificate. We assume that N--- is the purchaser from you, and F--- is N---'s agent. You purchased 70,000 from a California supplier, and 100,000 from two out-of-state suppliers. The California supplier shipped 6,000 tags directly to N--- in Utah. The remaining 164,000 tags were shipped to C--- M---, a California mailing house. These 164,000 tags were packaged along with paper printed materials and sent to locations throughout the United States, 7,500 of which were shipped to California addresses.

The first question is whether these tags fall under the definition of "printed sales messages" in Revenue and Taxation Code section 6379.5 and Regulation 1541.5. The definition of printed sales messages is a narrow one, limited to catalogs, letters, circulars, brochures, and pamphlets printed for the principal purpose of advertising or promoting goods or services. It does not include items such as matchbooks, keychains, or luggage tags.

Along with the tags, the mailing house packages other "paper printed material" and sends them together to locations all over the United States. We assume that the enclosed paper printed materials were "printed sales messages" as defined in Regulation 1541.5 (copy enclosed). The principal purpose must be the advertising or promoting of goods or services.

If Regulation 1541.5 applies, tax does not apply to the sale or use of the printed sales messages. You should review Regulation 1541.5(b)(1)-(3) to be certain that it meets all three requirements. If it does not meet the requirements, tax applies to charges for the printed sales messages to the same extent as to charges for printed matter generally.

It is our opinion that the 6,000 tags shipped directly to Utah is a sale in interstate commerce and not taxable, without regard to the identity of the "retailer." The property was so shipped pursuant to the contract of sale. See Regulation 1620(a)(3)(B). The 164,000 remaining tags are purchased from you by N--- for distribution free of charge. Such distributions are gifts under Regulation 1670(a), and N--- is the consumer.

The remaining question is whether any portion of the sale of these 164,000 tags from you to N--- is exempt as a sale in interstate commerce. It is our opinion that no portion of this sale is in interstate commerce. The suppliers all "drop shipped" on your behalf to N---'s agent, a California mailing house, for further handling at the direction of N---. To be eligible for an interstate commerce exemption, the tags would have had to be shipped out of state by the supplier pursuant to the purchase agreement.

The following is a quotation from Business Taxes Law Guide Annotation 280.0120 (which does not apply to "printed sales messages").

"A printer which delivers advertising materials to a mailing service for shipment to points within and without the state pursuant to subsequent instructions of the purchaser is liable for tax on his total gross receipts even though the mailing service is designated as a 'bailee.' The sale of the materials shipped to out-of-state points is not an exempt sale in interstate commerce because the materials are not shipped outside the state pursuant to the contract of sale between the printer and the purchaser."

If you have other questions, please contact me.

Sincerely yours,

Donald F. Fillman
Tax Counsel

DLF:wk

Enclosure: Reg. 1541.5