

M e m o r a n d u m**432.0140**

To: Mr. Ed Pedeupe
Audit Evaluation and Planning Unit

Date: September 19, 1990

From: Ronald L. Dick
Senior Tax Counsel

Subject: X-----

This is in reply to your August 6, 1990 memorandum regarding the application of sales and use tax to sales of directories by X----- and X----- to X-----.

You note that you are satisfied that the directories qualify as printed sales messages. The directories are printed to the special order of X----- . The sellers ship the directories by common carrier to an address specified by X----- . The carrier is X----- . The address specified by X----- usually a parking lot centrally located within the area or neighborhood in which the directories are to be delivered. The bills of lading all show X----- as the consignee. X----- hires individuals to deliver the directories to homes and businesses. X----- believes that the individuals deliver the directories as independent contractors and not as employees of X----- .

Given this information, you asked our opinion as to whether or not the sales qualify for exemption under Sales and Use Tax Regulation 1541.5, Printed Sales Messages.

As you know, Revenue and Taxation Code Section 6379.5 provides the exemption for the sale and use of printed sales messages:

“There are exempted from the taxes imposed 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.”

We believe that, under the facts you described, the sales do not qualify for exemption. Since the bills of lading show X----- as consignee, the directories are sent to X-----

rather than to “any other person at no cost to that person who becomes the owner thereof.” As noted at example 6 in subdivision (d) of Regulation 1541, the Board has taken the position that tax applies to sales of printed sales messages which are delivered to the purchaser. X----- immediately turning the directories over to independent contractors to then deliver to donees does not provide a basis for exemption.

RLD:sr