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April 11, 1997

Mr. C--- G. B---
 C--- F--- For
 A--- I--- T--- C---
 XXXX ---, --XX
 ---, CA XXXXX

Re: Regulation 1541.5

Dear Mr. B---:

This is in response to your January 28, 1997 letter regarding the application of tax to charges for printed materials of the C--- F--- for A--- I--- T--- C--- ("C---"). You enclose samples of materials and state:

"The orange-colored booklet *Lesson Plan Catalog 1995* (Exhibit 1) advertises educational lessons and units and is directed primarily at educators.

"The white-colored brochure *Education and Agriculture: A Growing Partnership* (Exhibit 2) and the pink-colored flyer *C--- Conference Registration Information* (Exhibit 3) promote a conference for California educators and agriculturists.

"The green-colored flyer *1995 C--- Teacher Awards* (Exhibit 4) promotes a program to recognize California educators who integrate agricultural instruction into their classrooms.

"The ivory-colored flyer *Summer Agricultural Institute* (Exhibit 5) promotes an annual seminar for California educators.

"Finally, the white-colored circular *Cream of the Crop* (Exhibit 6) and the buff-colored newsletter *Hands on Agriculture* (Exhibit 7) promote the activities of C---; in particular, the newsletter *Hands on Agriculture* contains on page two a solicitation for monetary gifts to support the activities of C---."

Specifically, you ask whether any of these materials qualify as printed sales messages under Sales and Use Tax Regulation 1541.5(a)(1) such that the charges for the materials are exempt from sales tax.

Revenue and Taxation Code section 6051 imposes a sales tax, measured by gross receipts, on retailers such as printers and publishers for retail sales of tangible personal property in California, unless the sales are specifically exempt from tax by statute. A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.)

Revenue and Taxation Code section 6379.5 provides an exemption from sales tax for certain sales of printed sales messages. Sales and Use Tax Regulation 1541.5 interprets and explains the exemption provided by section 6379.5. "Printed sales messages" means and is limited to catalogs, letters, circulars, brochures, and pamphlets printed for the principal purpose of advertising or promoting goods or services. (Reg. 1541.5(a)(1).) The exemption applies only if the printed sales messages are 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 person other than the purchaser, at no cost to that person, who becomes the owner. (Rev. & Tax. Code § 6379.5; Reg. 1541.5(b).) The term "printed sales messages" does not include campaign literature and other fund-raising materials, stationery, reply envelopes (except as otherwise provided) order forms, sales invoices, containers for sample merchandise, newspapers or periodicals, calendars, notepads, cash register tapes, or directories unless the directories meet the principal purpose of advertising or promoting goods or services. (Reg. 1541.5(a)(1).)

We assume that all of the materials you enclosed with your letter are printed to the special order of C--- and are mailed or delivered by the seller, the seller's agent, or a mailing house, acting as the agent for C---, through the United States Postal Service or by common carrier to educators at no cost to the educators. With these assumptions, we will now discuss whether the printed materials you sent for our review qualify as "printed sales messages" as defined in Regulation 1541.5.

The orange-colored booklet *Lesson Plan Catalog 1995* (Exhibit 1) is a catalog of educational lessons for educators. The catalog provides a list of lessons, describes the lessons, and specifies the cost of the lessons. The introduction to the catalog explains that agriculture affects the daily lives of every student, and encourages educators to use [the educational material] to connect classroom knowledge to real world situations. The catalog contains an "C-- - Lesson Plan Order Form" for persons to use to place orders for the lesson plans and requests that checks be made to C---. The catalog is intended to encourage recipients to purchase lesson plans. We believe that *Lesson Plan Catalog 1995* is printed for the principal purpose of advertising the sale of educational lessons, and the catalog constitutes a printed sales message.

The white-colored brochure *Education and Agriculture: A Growing Partnership* (Exhibit 2) advertises a conference for which a \$150 registration fee is charged in which educators, administrators, counselors, Board of Education members, and agriculturists can discuss the integration of agriculture into education and to obtain free resources, lesson ideas, sources of materials, and general agriculture information. The brochure contains a conference registration form and requests that checks be payable to C--- Conference. The brochure is intended to persuade recipients to attend the conference for a charge. We believe the principal purpose of the brochure is to promote the conference, and the brochure is a printed sales message.

The pink-colored flyer *C--- Conference Registration Information* (Exhibit 3) is an agenda of the 8th Annual C--- Conference. The agenda lists the times and dates for the orientation, tours, roundtable discussions, and workshops. The registration form requests that checks be made payable to C---. The flyer is addressed to "Potential Conference Participants," and offers the conference program for a fee of \$150. The agenda is intended to induce recipients of the publication to attend the conference. (See BTLG Annot. 432.0099 (12/23/93).) Accordingly, the primary purpose of the flyer is to advertise the conference. The publication is a printed sales message.

The green-colored flyer *1995 C--- Teacher Awards* (Exhibit 4) advertises a contest, and offers cash prize awards to teachers who satisfy certain criteria. The flyer does not show a fee charged for a teacher to enter the contest. The flyer contains entry procedures and explains the judging criteria. The principal purpose of the flyer is to promote the contest and not to advertise or promote the sale of goods or services. As such, we believe that *1995 C--- Teacher Awards* is not a printed sales message. (Cf. Bus. Taxes L. Guide Anno. 432.0500.) We believe the flyer is not a printed sales message, and the sale of the flyer to C--- does not qualify for the exemption provided by Revenue and Taxation Code section 6379.5.

The ivory-colored flyer *Summer Agricultural Institute* (Exhibit 5) provides information on a five-day seminar for California educators to learn about food and fiber production. The flyer explains that the "Summer Agricultural Institute helps educators bring science, mathematics, social science, language arts and other curricular areas alive with agriculture as a classroom theme." The flyer states that the "Summer Agricultural Institute will combine hands-on learning about agriculture with practical curriculum development and implementation." The flyer also offers free resources, and a quarterly newsletter for graduating participants. The flyer states that the only cost to the selected participants will be their transportation to and from Sacramento and that accommodations, food and travel during the Summer Agricultural Institute will be covered as part of the scholarship awarded to each participant. The flyer does not appear to advertise or promote goods or services for sale; rather, it appears that the flyer is informational. Accordingly, *Summer Agricultural Institute* cannot be considered a printed sales message. The sale of the flyer does not qualify for the exemption provided by Revenue and Taxation Code section 6379.5.

The white-colored publication *Cream of the Crop* (Exhibit 6) contains articles on C---'s Teacher Awards Program, the importance of nutrition, the experiences of teachers who integrate agriculture in into classroom studies, and farm facts. A small portion of the publication discusses the C--- Conference and lessons that are available at specified prices. Of the eight pages of materials, a little more than a page is dedicated to the C--- Conference and lessons. The publication is information to recipients. Given the foregoing, we do not believe that *Cream of the Crop* is a printed sales message to advertise or promote the sale of goods or services.

On the other hand, we note that *Cream of the Crop* is a "Fall, 1994" issue, and appears to contain news or information of general interest to the public or to some particular organization or group of persons. The publication's masthead notes C--- provides a free subscription on request. *Cream of the Crop* may be a "periodical," the sale of which is exempt from sales tax under Revenue and Taxation Code section 6362.7 which provides at subdivision (a):

"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 tangible personal property which becomes an ingredient or component part of any newspaper or periodical regularly issued at average intervals not exceeding three months and any such newspaper or periodical."

Subdivision (c) of section 6362.7 defines the term "periodical" as:

"any publication that appears at stated intervals at least four times per year, but not more than 60 times per year, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them. Each issue must be sufficiently similar in style and format to make it evident that it is one of a series. The term does not include printed sales messages, shopping guides, or other publications of which the advertising portion, including product publicity, exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period." (Rev. & Tax. Code § 6362.7(c); see also, Reg. 1590(a)(2).)

If you wish an opinion on whether *Cream of the Crop* is a periodical, please write again and send three consecutive copies of *Cream of the Crop*.

The buff-colored newsletter *Hands on Agriculture* (Exhibit 7) reports on the recently completed Summer Ag Institute and contains a profile of a member of the Foundation's Board of Directors. The reverse side of the newsletter requests a donation to the foundation, contains the donation form, and provides a list of major donors. The term "printed sales messages" does not include fundraising materials. (See BTLG Annot. 432.0005 (1/7/93).) We believe the sale of *Hands on Agriculture* to C--- does not qualify for the exemption under Revenue and Taxation Code section 6379.5.

We note that the *Hands on Agriculture* newsletter you submitted is a "Summer, 1995" issue and appears to contain news or information of general interest to the public or to some particular organization or group of persons. If you wish, you may write again and submit three consecutive copies of *Hands on Agriculture* for our opinion of whether it qualifies as a periodical.

This letter is based on the facts and materials you sent and the assumptions made above. If our assumptions are incorrect, this opinion does not apply. If you wish an opinion applicable to the specific facts, please write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:cl

cc: --- District Administrator (--)