

M e m o r a n d u m**325.0011**

To: --- --- – Auditing (JEJ)

Date: August 24, 1984

From: Headquarters – Legal
John Abbott, Tax CounselSubject: Z--- S--- of S--- D---
SR -- XX-XXXXXX; SR -- XX XXXXXX
Out-of-state printing and mailing

This is in reply to your memorandum to Legal dated June 4, 1984. You state:

An audit in process of the S--- D--- Z--- has disclosed that it has purchased consulting, direct mail packages, renewal notices, added gift appeals, etc. from E--- D--- M--- located in ---, Mass. (See P.O. attached). The out-of-state firm provides materials, (paper and envelopes) letter generation and mailing services for these packages for which it makes separate charges. (See copy of invoice attached).

Some vendor's invoices in 1981 and 1982 also have a separate charge for freight and air freight to [California] post offices. There were no separate freight charges in 1983. The controller explained that in most cases the letters and packages are mailed direct from out of state. The freight charge would be the cost for freight from vendor's place of business to a post office in ---, Mass. In some cases, however, the packages are shipped to the [California] post office by air freight and mailed from a local post office.

Auditor has determined that where the packages are mailed directly from out of state the charges for materials and letter generation would not be subject to use tax. However, where the packages are shipped from [---], CA, the charges for materials including letter generation and list rental on services other than mailing services would be subject to use tax.

Please advise if our interpretation on the tax application to these purchases of materials for these items is correct.

Our conclusion is that use tax does not apply when the direct mail packages and other printed matter is mailed to California addresses either from a Massachusetts post office, or from a [California] post office. This assumes that the seller (E--- D--- M---) has directed the carrier to deliver the printed matter directly to the [California] post office for mailing, and not to the taxpayer or a California representative or agent of the taxpayer (such as a mailing house) for subsequent delivery to the [California] post office for mailing. This also assumes that the invoices or other agreements related to the sale did not provide that title to the printed matter would pass to the taxpayer in California. (None of the sample invoices attached to your memo contain such a title provision).

You correctly point out that use tax does not apply to sales of printed matter when the sale occurs out of state and the taxpayer instructs the seller to deposit the printed matter in the mails at an out-of-state location addressed to California addressees. In this situation the “use” of the printed matter by the taxpayer does not occur in this state, under the statutory definition of “use” in Revenue and Taxation Code section 6009 (“the exercise of any right or power over tangible personal property incident to the ownership of that property....”).

We also conclude this same rationale means that the taxpayer makes no “use” of the property in California when the taxpayer, as here, instructs the out-of-state seller to mail the printed matter from a California post office by delivering the printed matter to a common carrier out of state for redelivery to the California post office. Neither the carrier nor the post office can be said to be California agents or representatives of the taxpayer. The printed matter therefore began a continuous journey in interstate commerce when the seller delivered the printed matter to the carrier at an out-of-state location. The taxpayer never had title to the printed matter in California and, therefore, could not pass title (use) the printed matter in California.

JA:ss