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January 4, 1994

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*Executive Director*

Mr. C--- J. M---  
President  
F--- D---, Inc.  
P. O. Box XX,  
---k, CA XXXXX-XXXX

**Re: SR --- XX-XXXXXX**

Dear Mr. M---:

This is in reply to your October 26, 1993 letter regarding the application of sales tax to charges for a directory.

You explained that you are a directory company which provides a local telephone directory to the --- area. We understand that the directory consists of more than 50 percent of yellow page advertising and qualifies as a printed sales message as defined at Sales and Use Tax Regulation 1541.5 at subdivision (a)(1). You did not explain the nature of your transaction; however, we assume that you sell advertising space in the directory, and you purchase the printing of the directories from a printer. If our assumption is wrong, please provide us with the correct facts, because this opinion would not apply to other facts.

You note that the printer, which is an unrelated company, ships the directories by way of United Parcel Service (UPS) to another company which you own. Your company uses its employees to hand-deliver the directories to the ultimate user. You asked whether the shipment by way of UPS to the distribution company satisfies the common carrier requirement of Regulation 1541.5.

Subdivision (b) of Regulation 1541.5 provides that tax does not apply to the sale or use of printed sales messages which are:

- (1) Printed to the special order of the purchaser;

- (2) 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;
- (3) Received by any other person at no cost to that person who becomes the owner of the printed material.

As you noted, subdivision (b)(5) of the Regulation provides it is only necessary that a common carrier be involved in some stage of the delivery to satisfy the common carrier requirement.

Although we agree that shipment by UPS to a distribution company would satisfy the common carrier requirement of the regulation, that alone does not make the sale of the printed matter to you exempt. We believe that the printer's sale of the printed directories to you would be exempt provided that your "distribution company" is truly an entity separate and distinct from F--- D---, Inc., rather than a division of F--- D--- Inc., and is engaged in the business of stamping, addressing, sealing or otherwise preparing property for mailing for compensation to qualify as a "mailing house" as defined at subdivision (a)(3) of Regulation 1541.5.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick  
Senior Tax Counsel

RLD:plh