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January 5, 1994

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Executive Director

Mr. D--- B---
B---, J---, K--- & E---, Inc.
XXX --- Centre
XXX South XXth Street
---, Nebraska XXXXX-XXXX

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

Dear Mr. B---:

This is in reply to your October 28, 1993 letter regarding the application of sales tax to sales of advertising inserts. You provided the following facts:

"B--- has full service advertising offices located in several major cities in the U.S., and overseas. The offices act as Agent on behalf of clients in dealing with third parties.

"The B--- New York office created a print campaign specifically for a client that would appear as an attached insert included in major consumer and trade magazines. The New York office hired a California printer to produce several million inserts to promote the clients' products. The inserts were delivered by common carrier to trade and consumer magazines in several states, including publishers in California. (sic.) The publications mailed the magazines to subscribers nationwide."

You go on to note that the principal purpose of placing the inserts is to advertise and promote the client's goods. The inserts are high quality four color materials designed and printed specifically for an individual client to look like an integral part of the magazines. A third party vendor was contracted to do the printing and distribution to publications by common carrier.

You go on to note the inserts are incorporated into magazines which are printed four times or more per year and qualify for the periodical exemption provided by Revenue and Taxation Code section 6362.7. Since you note that more than 95 percent of the magazines are distributed by subscription and sent by mail, we understand that you are referring to the exemption provided by subdivision (b) of Section 6362.7; the exemption for the sale and use of periodicals regularly issued at average intervals not exceeding three months and that are sold by subscription and delivered by mail or common carrier.

Given this information, you ask the following questions:

"Are we correct in our assumption that magazine inserts qualify as non-taxable printed sales messages"?

Magazine inserts may qualify as printed sales messages. However, in order to do so, the inserts must consist substantially of printed sales messages for goods and services as required by Revenue and Taxation Code section 6379.5. Assuming that the inserts described qualify as printed sales messages, we believe the sale of the inserts qualify for exemption under the criteria of Sales and Use Tax Regulation 1541.5 in that the printer prints the inserts to the special order of the customer and ships them by common carrier to the publications. The remaining issue is whether the inserts are received by the magazine subscribers at no cost to those subscribers. We have taken the position that, when a person purchases a periodical, the advertising material is provided as a part of the periodical at no cost for purposes of Regulation 1541.5.

"Does the publication have to qualify for the periodical exemption in order for the sales tax not to apply"?

Our answer to this question depends on further facts. For example, if a publication is informational in nature such that the purchaser pays for the publication for its informational content, we would consider the inserts as provided at no cost. On the other hand, if the publication only advertises products, then the purchaser pays the price to receive the printed sales messages. The printed sales messages would not be provided "at no cost to that person who becomes the owner thereof." (Cf. Rev. & Tax. Code § 6379.5; Sales and Use Tax Reg. 1541.5, subd. (b)(3).)

"Do newsstand sales versus subscriptions affect taxable status"?

We assume that you are referring to the taxable status of the printed sales messages and not the taxable status of the periodicals. The sale of the printed sales messages to the client is nontaxable whether the printed sales messages are inserted into periodicals the sale of which are exempt under Section 6362.7 or are taxable newsstand sales.

Mr. D--- B---

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432.0064.400

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

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD:plh