

**STATE BOARD OF EQUALIZATION**

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January 4, 1990

Mr. E--- F. C---  
Multistate Tax Specialist  
--- & ---  
XXX --- ---  
---, CA XXXXX

Re: C--- P---  
Db a R--- P--- H--- V---  
SR -- XX-XXXXXX

Dear Mr. C---:

This is in reply to your October 31, 1989 letter regarding the application of sales tax to charges to R--- P--- H--- V--- (R---) by the suppliers of various promotional materials. You explained the following facts:

“R--- obtains rights to exploit theatrical productions, primarily movies, in the home video market. It contracts with an outside production facility to convert the movies to video cassettes. It then sells those cassettes to wholesalers (obtaining properly executed resale certificates) who in turn sell them to retailers and to rental outlets.

“R---, in order to promote retail sales and rentals of these cassettes, distributes promotional materials to wholesalers for redistribution among the retailers and rental outlets. It obtains these materials by contracting with outside facilities to manufacture catalogs, brochures, pamphlets, posters, window displays, sun visors, clocks and novelty items, on all of which are printed promotional messages. These items announce coming releases, show still shots from the movies, highlight members of the cast and/or production crew and/or carry the R--- logo. In accordance with the contracts, the outside manufacturers send these items directly to another outside contractor, the packager.

“The latter, in accordance with R---’s instructions, packages these materials and ships them via common carrier, to the various wholesalers, who thereupon become the owners of the materials. R--- does not charge the wholesalers for these items.

“The wholesalers, in accordance with their own judgment and without any direction from R---, distribute these items free of charge among the retailers and rental outlets who are either existing or prospective customers.”

You sent samples of several of the promotional items and asked whether sales of such items are exempt from tax under Revenue and Taxation Code section 6379.5 and Sales and Use Tax Regulation 1541.5, Printed Sales Messages.

Section 6379.5, as a tax exemption statute, must be strictly construed and cannot be enlarged nor extended beyond the plain meaning of the language employed. (McConville v. State Board of Equalization, 85 Cal.App.3d 156.) To such end, Regulation 1541.5 defines the term “printed sales messages” to include only items specifically provided in the statutes; that is:

“‘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. The term includes such items as department store catalogs, brochures advertising automobiles and vacations, circulars advertising professional services, and coupon books. The term does not include campaign literature and other fund-raising materials, stationery, reply envelopes, except as provided for in (b) of this regulation, order forms, sales invoices, containers for sample merchandise, newspapers or periodicals, calendars, notepads, cash register tapes, or directories unless they meet the principal purpose of advertising or promoting goods or services.”

We do not believe that the term can be construed to include items such as window displays, sun visors, clocks, calendars, and other novelty items, e.g., the “---” doll, visored cap, and Frisbee, which you sent for our review.

Although “posters” are not specifically mentioned in the statute, as noted above, circulars are. We have previously considered that a poster printed on a single sheet of paper, such as you sent, qualifies as a “circular” under the common meaning of that term. When such a poster is printed for the principal purpose of advertising or promoting goods or services, the poster is a “printed sales message”.

Under subdivision (b) of Regulation 1541.5, 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."

Under the facts you provided, the items which qualify as printed sales messages (i.e., the catalogs, brochures, pamphlets, and posters) are printed to the special order of R---. You noted that the supplier of the printed sales messages sends the items directly to a packager, whom you described as an outside contractor, who packages the items and ships them by common carrier to the various wholesalers who become the owners of the items at no cost to them. We believe that the packager who is engaged in the business of preparing the printed sales messages for mailing for compensation qualifies as a "mailing house" for purposes of Regulation 1541.5. (Sales and Use Tax Reg. 1541.5, subd. (a)(3).) The suppliers' sales or printed sales messages under the circumstances you described qualify for exemption from tax.

You also sent for our review a letter that G--- R--- and S---, a printer and lithographer, sent to Principal Tax Auditor Glenn Bystrom for review. Accompanying the letter to Mr. Bystrom was a number of printed materials which G--- R--- and S--- prepares for R---. You asked that we review the items to determine whether they qualify as printed sales messages. We believe that the brochures, letters and flyers, post cards, posters and guidebooks (catalogs) which G--- R--- and S--- sent as exhibits qualify as printed sales messages.

One of the items, however, is a heavy paper presentation folder which is folded and glued so as to form two inside pockets. The cover of the folder is printed with an R--- logo and title logo of a motion picture. We do not believe that the presentation folders qualify as printed sales messages. G--- R--- and S---' letter notes, however, that the folders with pockets are used as "containers" for advertising and other literature promoting the sale of specific videocassettes. Subdivision (b)(7) of Regulation 1541.5 provides that, "tax does not apply to charges for containers, such as envelopes or wrapping paper, when sold with the printed sales messages for shipment or delivery...." If G--- R--- and S---, in fact, sells the folders as containers of the printed sales messages for shipment or delivery, tax does not apply to the sale. On the other hand, if G--- R--- sells only one piece of literature, then we believe that the folders are not "containers sold with the printed sales messages for shipment or delivery." Rather, we believe that the presentation folders are novelty items, the sale of which is subject to tax.

The application of tax to the sale of the items which are not printed sales messages is provided in Sales and Use Tax Regulation 1670, Gifts, Marketing Aids, Premiums, and Prizes. Generally, R--- is the consumer of marketing aids it provides to persons engaged in the business of selling R---'s products when R--- does not obtain reimbursement equivalent to at least 50 percent of the purchase price of the marketing aid. Tax applies to the supplier's sale of such marketing aids to R---. On the other hand, if R--- obtains from its customers consideration equivalent to at least 50 percent of the purchase price of the marketing aid, R--- is deemed to have sold the marketing aid rather than consumed it. R--- may obtain such consideration either by making a separate charge or by increasing the regular sales price of other merchandise sold to the customer and delivered with the marketing aid. (Sales and Use Tax Reg. 1670, subd. (b).)

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:sr