

**STATE BOARD OF EQUALIZATION**

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October 21, 1996

Ms. P--- C. S---
Certified Public Accountant
XXXXX --- ---
--- ---, CA XXXXX

**Re: M--- Design/P--- I---
DMC E---, Inc.
(D--- M--- C---, Inc.)
SR - XX-XXXXXX**

Dear Ms. S---:

This is in response to your letter dated August 7, 1996, in which you ask for clarification of the requirement that the printed sales messages be delivered by a common carrier in order for their sale to be exempt. In your letter you state:

“. . . My client is basically an advertising agency that provides to their clients advertising that generally qualifies as an exempt printed sales message under Regulation 1541.5.

“We have recently begun to offer a new means of distribution of a printed sales message and would like to be sure that this transaction will still qualify the sale as exempt under R. 1541.5. I have spoken with two audit supervisors and a senior tax auditor and also reviewed annotations 385.0070 as well as 432.0063. I believe our delivery method is acceptable under R. 1541.[5], but am requesting a ruling from your department.

“The transaction is as follows: A piece of advertising is delivered from the printer to another independent business. This business puts the advertising in a plastic sheath and then has independent contractors hang these on the public's door. This independent business does not have a common carrier license. Your audit personnel were not clear who might issue this type of license nor does R. 1541.5 specify that one is required. Reference has also been made as to a difference between a common carrier and a contract carrier.

“It is my reading of the definition of common carrier in R. 1541.5 that any person transporting property for hire and offering his services to the public qualifies as a common carrier. The definition does not specify that the transporting needs to be done by truck, UPS or FedEx for example. Even with those types of services, a human is still responsible for the ultimate delivery.”

We understand the sale of the printed sales messages complies with all the requirements for the exemption contained in Revenue and Taxation Code section 6379.5 excepting delivery, and that your only question is whether delivery by the “independent business” (business) by independent contractors complies with the delivery method requirement for the sale of printed sales messages to be exempt.

As you know, in order for the sale of a printed sales message to be exempt, the statute requires that the printed sales message be “mailed or delivered by the seller, the seller’s agent or a mailing house acting as agent for the purchaser, through the United States Postal Service or by common carrier. . . .” (Rev. & Tax. Code § 6379.5.)

Your conclusion that a person need not be a licensed common carrier in order to be a common carrier as defined in Regulation 1541.5 is correct. In order to qualify as a common carrier for Regulation 1541.5 purposes a person must only be engaged in the business of transporting property for hire and offer his or her services indiscriminately to the public or to some portion of the public. (Sales and Use Tax Reg. 1541.5(a)(4).) The delivery of the printed materials by independent contractors hired by the business to peoples’ homes may satisfy the delivery requirement for the sale of printed sales messages to be exempt. We cannot make a definitive determination of whether the delivery requirement for the exemption is met without more information about the business and the transaction between the business and the independent contractors.

As above noted, we understand you concluded that the printed materials meet all the other requirements for their sale to be exempt. This opinion applies only to, and whether, the delivery method you describe might satisfy the requirement that printed sales messages must be either mailed through the United States Postal Service or delivered by common carrier in order for their sale to be exempt.

If you have any further questions in regard to the matters contained herein, please do not hesitate to write again.

Yours very truly,

Anthony I. Picciano
Tax Counsel

AIP:cl

cc: --- District Administrator