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June 14, 1996

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Re: *Sales and Use Tax Regulation 1541.5*  
*Printed Sales Messages*

Dear

This is in response to your letter of March 19, 1996, in which you inquire of the specific application of the common carrier provision required by the statute and explained in Sales and Use Tax Regulation 1541.5. You state:

"The taxpayer manufactures and sells printed sales messages which are printed to the special order of customers within a particular industry group and geographical area. The messages are delivered by common carrier to third party recipients who become the owners of the messages at no cost to them.

"The same taxpayer is licensed as a common carrier. As a common carrier, the taxpayer contracts to deliver the messages he has sold to customers, and he also contracts to deliver messages provided by customers from unrelated sources. Assuming all of the other requirements of Regulation 1541.5 are met, please answer the following questions:

- "1. If title to the messages sold by the taxpayer passes before the commencement of delivery (so the taxpayer no longer is the owner of the merchandise at the inception of the delivery process), and the taxpayer's common carrier services are separately invoiced and/or contracted for, would the messages qualify for exemption under the regulation? If not, why not?
- "2. If the messages do qualify for exemption under the scenario described in the preceding paragraph, what form of documentation would be needed to support the underlying facts?"

We understand that the sale of the printed sales messages complies with all the requirements for the exemption contained in Revenue and Taxation Code section 6379.5 and that

the only issue is whether delivery by the taxpayer complies with the common carrier provision as explained in Sales and Use Tax Regulation 1541.5.

As you know, in order for the printed sales message exemption to apply, 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 the agent for the purchaser, through the United States Postal Service or by common carrier ... " (Rev. & Tax. Code § 6379.5.)

"Common carrier" is defined as any person engaged in the business of transporting property for hire and who offers his services to the public indiscriminately or to some portion of the public. (Sales and Use Tax Reg. 1541.5(a) (4).) We understand that the taxpayer would be both the seller and the common carrier used to transport the printed sales messages.

We believe the statute's requirement that the seller or the seller's agent deliver the printed sales messages "through the United States Postal Service or by common carrier" means that the common carrier be an entity other than the seller or the purchaser. To conclude otherwise would circumvent the statute. The Legislature did not intend for different rules to apply to the seller simply because that seller also happens to be a common carrier. If the Legislature had so intended, the statute would have stated so. Thus, the sale of those messages does not comply with the provisions for the exemption if the seller and the common carrier are the same entity regardless of the passage of title to the printed sales messages.

If you have any further questions in regard to this matter, please do not hesitate to write again.

Yours very truly,

Anthony I. Picciano  
Staff Counsel

AIP:cl

Cc: X----- District Administrator