

M e m o r a n d u m**220.0165**

To: Mr. Gary J. Jugum
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From: Stella Levy
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Subject: Nexus and Newspapers/Periodicals

The repeal of the sales and use tax exemption for newspapers and periodicals, generates the issue of how the tax applies to out-of-state publications.

Initially, it should be noted that in many (most?) cases sales tax will be the applicable tax because the publications will be sold at retail in this state. Additionally, sales tax (rather than use tax) will apply to subscription sales whenever there is participation by the seller's "local branch, office, outlet or other place of business . . . or by any agent of the retailer having any connection with such branch, office, outlet, or place of business." (Rev. & Tax. Code § 1620(a)(2)(B). See also, Norton Co. v. Department of Revenue of Illionois (1951) 340 U.S. 534.)

The rule governing the applicability of use tax to an out-of-state retailer is contained in Revenue and Taxation section 6203. This statute was substantially amended, effective January 1, 1988, to add subsections (d) – (i) to the definition of "retailer engaged in business in this state." Under this expanded definition, most out-of-state publishers would have nexus with California for use tax collection purposes.

For example, under subsection (a) of section 6203, maintenance of an office constitutes nexus. The U.S. Supreme Court, in the leading case of National Geographic v. Cal. Equalization Board (1977) 430 U.S. 551, held that appellant's maintenance of two offices in California constituted sufficient nexus to justify imposition of the use-tax-collection liability. In Standard Pressed Steel Co. v. Washington Rev. Dept. (1975) 419 U.S. 560, maintenance in the taxing state of one employee, who worked out of his home as a consultant, was a sufficient relationship to the state to support imposition of a direct tax upon a foreign corporation. Thus, under both our statute and Supreme Court precedent, any newspaper or periodical maintaining a news bureau in California would be obligated to collect use tax on their subscriptions.

Out-of-state newspapers and periodicals, which do not maintain news bureaus, would have nexus if subscriptions were solicited in this state by their agents, representatives, salespersons or canvassers (Rev. & Tax. Code § 6203(b)) or by mail “if the solicitations are substantial and recurring and if the retailer benefits from any banking, financing, debt collection, telecommunication or marketing activities occurring in this state....” (Rev. & Tax. Code § 6203(f).) Yet another basis for nexus would be in those cases where the publisher is “owned or controlled by the same interests which own or control any retailer engaged in business in the same or a similar line of business in this state.” (Rev. & Tax. Code § 6203(g).)

SCL:cl

Attachment (Proposed Draft of Reg. 1683.5)