

Jarvis, Sharon

From: Jarvis, Sharon
Sent: Tuesday, February 05, 2002 1:09 PM
To: Rosenthal, Dave
Cc: Lyle, Geoff; Beck, Barbara; Anderson, Vic
Subject: Annotations on Periodicals (perhaps they should all be reviewed in light of the below comments)

385.0920 (3/2/67) - this annotation should be changed to reflect the fact that under the current version of Rev. and Tax. Code section 6362.7 and Reg. 1590 "periodicals" are no longer exempt unless they are sold by subscription delivered by mail or common carrier or are subject to some other exemption such as being distributed by a nonprofit.

I suggest the word "exempt" in the last sentence of the annotation be deleted and replaced by the word "periodicals." That should take care of the problem.

385.0040 (2/8/67) - same problem in using the word "exempt" in the annotation. I suggest that you delete the word "exempt" in the first sentence of this annotation and replace it with the word "periodicals."

385.0060 (10/9/67) - same problem as above. I suggest you just delete the word "exempt" from the annotation and replace the word "an" with the word "a."



STATE BOARD OF EQUALIZATION

February 8, 1967

Dear Mr.

This refers to the petition for re-determination filed on behalf of your client, "S".

We have reviewed the facts and arguments relating to the contention that the bowling alley score sheets are exempt periodicals.

Ruling 50, a copy of which is enclosed, clearly provides that for a periodical to be exempt it must appear at stated intervals, and each issue must contain news or information of general interest to the public or to some particular organization or group of persons.

Although some score sheets contain information of interest to persons who bowl, the samples submitted indicate that each issue does not. In addition, the sheets do not appear at "stated" intervals. The sheets contain nothing to indicate what interval, if any, they are issued.

Finally, the ruling specifically excludes "score-sheets", which is primarily what the paper consists of.

Ruling 50 and Section 6362 are tax exemption provisions.

There is a well established rule that exemptions from taxes are to be strictly construed against the taxpayer. Good Humor Co. v. State Board of Equalization, 152 Cal. App. 2d 879.

If we were to conclude that the bowling score sheets were exempt periodicals within the meaning of the ruling, it would amount to most liberal conclusion, and one not supported by the facts.

The score sheets are not sold by your client and the issuance of resale certificates to printers was improper notwithstanding the fact that the printers may have taken them in good faith.

Printing orders that can be shown to have been delivered by the printer via common carrier, motor express, mail, or other means, to out-of-state bowling alleys are not subject to California sales tax.

Printing jobs that are delivered by the printer to your client for redelivery out of state are subject to sales tax, since the delivery to your client in this state completes the sale by the printer. Since

the purchase of the score sheets is not for resale by your client, your client owes the use tax on purchase of the score sheets, including the cost of the paper, unless your client purchased the blank paper tax paid.

We understand there may be some question as to the adjustments made in the reaudit last May. We have recommended that the district ascertain whether a reaudit is advisable and if so, we recommend one to reflect adjustments consistent with the conclusions stated above.

We are recommending that the negligence penalty be deleted. Although we are of the opinion that the argument that the score sheets are exempt periodicals is without merit, this difference of opinion does not, alone, make a case for finding negligence.

If, after considering our recommendations and conclusions, your client wishes to have the matter heard by the Board, please notify us in writing within three weeks.

Very truly yours,

Robert H. Anderson
Associate Tax Counsel

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