



## STATE BOARD OF EQUALIZATION

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April 24, 1995

Re: ---

Dear ---

This is in response to your letter dated December 28, 1994 concerning the application of sales tax to the purchase by --- of a one-year membership in the ---. As I indicated when we spoke on the telephone on April 14, 1995, we apologize for the delay in responding to your letter.

From our telephone conversation I understand that --- membership in the --- provides --- with two things. First, as a --- member, --- receives a subscription to a weekly publication, the --- --- --- (--- News). The --- News is published in a booklet format. The contents of the publication are lists of construction projects in the --- area which are currently accepting construction bids, and lists of construction project bids made, the successful bids, the names of the successful bidders and the amounts of the successful bids. For purposes of this opinion, I assume this publication is delivered to --- by mail or common carrier. Second, membership in the --- gives --- access to a "bidding room" which is a repository of plans for various construction projects on which --- members may wish to make construction bids. You indicated that these two things are the only benefits of membership in the --- and that membership does not entitle the member to make any purchases of building materials or any other tangible personal property.

I will first discuss the Sales and Use Tax Law in general, as it applies to Fisher. I will then specifically address the issue of ---'s purchase of a one-year membership in the ---

### Discussion

Retail sales of tangible personal property in California are subject to sales tax measured by the gross receipts from the sale. (Rev. & Tax. Code § 6051.) Gross receipts mean the total

amount of the retail sale price for which the property is sold. (Rev. & Tax. Code § 6012(a).) The sale price includes any services which are a part of the sale. (Rev. & Tax. Code § 6012(b)(3).)

Statutory exemptions from imposition of tax apply to certain sales of tangible personal property. One such exemption applies to periodicals regularly issued at average intervals not exceeding three months which are sold by subscription and delivered by mail or common carrier. (Rev. & Tax. Code § 6362 . 7 (b); Reg. 1590 (b) (3).)

"Periodical" is defined as any publication which appears at stated intervals at least four times per year, but no more than 60 times per year, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues in the series in the nature of the articles appearing in them. Each issue also must be sufficiently similar in style and format to make it evident that it is one of a series. The term "periodical" does not include printed sales messages, shopping guides, or other publications of which the advertising portion, including product publicity, exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period. (Rev. & Tax. Code § 6362.7(c); Reg. 1590 (a) (2) .)

#### The Sale of a One-Year Group Membership

The primary benefit of ---'s purchase of a one-year Group membership is a subscription to the --- News. When the primary benefit of the purchase of a membership in an organization is the receipt of a publication, we view the transaction as the sale of tangible personal property (the publication), and .consider the membership and any services which members receive as incidental to the sale of the publication. In such a situation, the organization is the retailer of the publication. (See BTLG, Annot. 385.0980 (4/7/67).) Sales tax applies to the organization's sale of the publication unless the publication is classified as an exempt periodical under the provisions of Revenue and Taxation Code section 6362.7.

If the --- News is a periodical as defined by Revenue and Taxation Code section 6362.7, and is delivered by mail or common carrier, its sale by subscription is exempt from tax. While we cannot conclusively state that the --- News is an exempt periodical unless we have the opportunity to review at least three consecutive issues of the publication, based upon the description which you provided in our telephone conversation, it seems likely that the --- News would meet the statutory requirements to qualify as an exempt periodical, as discussed below.

If, as you stated, the --- News is issued weekly, it meets the requirement of appearing at stated intervals at least four times a year, but not more often than 60 times per year. If each issue of the --- News also contains information of general interest to a particular group of persons, bears a relationship to prior and subsequent issues with respect to similarity of subject matter, has a connection between the different issues of the series in the nature of the articles appearing in them, and each issue is sufficiently similar in style and format to make it evident that it is one of a series, then those requirements for the publication to qualify as a periodical are met. A final requirement to qualify as a periodical is that the advertising portion (if any) of the --- News may not exceed 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period. If the --- News meets all of the above criteria, and is delivered by

mail or common carrier, a sale of a subscription to it via the purchase of a membership in the --- is exempt from tax.

The only other benefit of joining the --- is access to the bidding room. Access to the bidding room is a service which is incidental to the sale of tangible personal property (the --- News). As such, charges attributable to this service would be included in the gross receipts of the retail sale of the --- News if the sale of the --- News was subject to tax. However, if, as previously discussed, the sale of the --- News is statutorily exempt, tax does not apply to any charges attributable to the bidding room service.

I hope this information is of assistance. Please write again if we may be of further aid.

Sincerely,

Sharon Jarvis  
Staff Counsel

SJ:es