



STATE BOARD OF EQUALIZATION

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Executive Director

February 2, 1996

Re: Periodicals and Newspaper on Microform and CD-ROM Format

Dear: ---

Your letter of October 24, 1995, directed to the Sales and Use Tax Division was referred to the Board's Legal Division for response.

In your letter you describe the following transaction:

--- is a publisher of periodicals and newspapers. We are not the original publisher, but republish the original documents in microform and CD-ROM format. My specific question concerns newspapers. Newspapers vary from national publications, USA Today, Los Angeles Times, Wall Street Journal, etc., to local publications; Ann Arbor News, Baton Rouge Advocate, etc. They may be supplied on a subscription basis (weekly to monthly) to yearly one time shipments.

"If provided on a subscription basis, in nontraditional format (microform or CD-ROM), shipments ranging from weekly to monthly depending on title, are these items taxable or exempt. If there is a frequency issue, is the frequency depending on the, number of --- shipments versus the number of shipments of the original (print) publication?"

I presume your intention is to sell subscriptions to your republication of various newspapers to California residents. We note that you have been paying use tax collected from California residents on a regular basis.

As you know, use tax applies to the sales price of tangible personal property purchased from a retailer for use in California. With exceptions not relevant here, every retailer engaged in business in this state and making sales of tangible personal property for use in this state, shall, at the time of making the sale or at the time that the use becomes taxable, collect the use tax from

the purchaser. The amounts so collected by the retailer constitute debts owed to this state. (Rev. & Tax. Code §§ 6203, 6204.)

The sale and use of certain newspapers and periodicals is exempt from sales and use tax. (Rev. & Tax. Code § 6362.7.) As explained in subparagraph (b) (3) of Sales and Use Tax Regulation 1590, tax does not apply to the sale and use of a periodical, which appears at least four times but not more than sixty times each year, which is sold by subscription, and which is delivered by mail or common carrier.

"Periodical" is defined in subparagraph (a) (2) of Regulation 1590, and is limited to publications which appear at stated intervals. Each issue must contain news or information of general interest to the public or some particular organization or group of persons. Each issue must also bear a relationship to prior and subsequent issues with respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series and the nature of the articles appearing in them. Each issue must be sufficiently similar in style and format to make it evident that it is one of the series. The newspapers that you listed (USA Today, Los Angeles Times and Wall Street Journal) meet these criteria, however, the sale and use of those publications is not exempt since they are published more than 60 times per year. I assume this is the case also with the local newspapers you listed.

As noted above, the original publication of the newspapers you listed does not satisfy the frequency requirements established for the exemption since they are published more than sixty times per year. However, we look at the frequency of your republication of the newspapers to determine if a California resident's use of the republication on microform or CD-ROM qualifies for the exemption. The Board's legal staff has previously taken the position that a periodical need not be printed on paper and may be published on CD-ROM, cassettes or microform. The sale and use of such a publication may be exempt if all the requirements of the exemption are met. You satisfy the frequency requirements for the use of the republished newspapers to be exempt from use tax for those that you republish on a weekly or monthly basis. Those that are published by you annually do not meet the frequency requirement for the exemption.

The Board's Audit Evaluation and Planning Division provided the following additional information by memorandum:

"In addition --- was contacted following the receipt of his letter to obtain the permit number for --- --- stated that he would like a response to an additional question. --- also provides photocopies of indexes from either the publisher or from --- as part of the subscription to the CD-ROMs and microforms. The photocopies are also delivered by mail. He wants to know if the indexes qualify as a periodical and if the frequency affects the tax status."

The Board's legal staff has previously taken the position that publications which consist of indexes or other types of tabular data contain information of general interest to the public or some portion of the public such that the publication may qualify as a "periodical." (Bus. Tax. Law Guide Annot. 385.0170 (12/21/88).) The legal staff has also taken the position that a directory issued at no extra cost as part of a subscription to a monthly periodical qualifies as the thirteenth edition of the periodical where the format, size, and name is the same as the monthly periodical. (Bus. Tax. Law Guide Annot. 385.0880 (5/26/65) and 385.0900 (6/26/52).) In such case, the sale and use of the directory then qualifies as exempt along with the sale and use of the

other twelve issues of the periodical. We believe the same result applies to your issuance of the index to your publication. An index you sell as part of the subscription to a periodical may qualify as one of the issues of the periodical provided the format, size, and name of the index is the same as the periodical. We caution that, if you issue an index edition as part of the sale of the periodical with enough frequency that you issue more than 60 issues a year, the entire transaction is subject to tax. For example, if you sell a subscription to a periodical consisting of 52 weekly issues of the re-publication of a newspaper together with 12 monthly index issues, your sale of the total of 64 issues in the year does not qualify for the exemption.

If you have any further questions in regard to the matters contained herein, please write us directly including specific facts related to the publication involved.

Yours very truly,

Anthony I. Picciano
Staff Counsel