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March 31, 1993

BURTON W. OLIVER
Executive Director

Ms. D--- M. F---
P---
P. O. Box XXXX
---, CT XXXXX

Dear Ms. F---:

This is in response to your letter dated February 11, 1993. You had previously written to us, stating that Corporation A offers a "subscription service" which includes:

Research sets which include a detailed five year forecast of key issues and strategic planning assumptions in particular segments of the information technology industry. Customers receive Research Notes approximately every two weeks which are a packet of 4 to 7 one page (two-sided) documents. In addition, customers receive Analysis Reports which are issued periodically and provide more in-depth analysis on particular topics that are included in the Research Notes.

We concluded in our letter dated July 8, 1992 that the sale of the Research Notes and Analysis Reports were taxable sales of tangible personal property.

Since we wrote that letter, the legislature enacted Revenue and Taxation Code section 6362.7 which exempts sales of certain periodicals. You ask whether the periodical exemption applies to Corporation A's Research Sets.

According to your letter, the Research Sets meet the contents requirements of the exemption and are delivered by mail at average intervals not exceeding three months. Further, the publications appear at intervals at least four times a year but not more than 60 times per year. However, the Research Sets are not published at exact stated intervals. For example, the Research Notes are published approximately every two weeks but at average intervals not exceeding three months.

The periodical exemption does not apply if the periodicals are not issued regularly. Examples of periodicals that are issued regularly are periodicals that are issued weekly, biweekly, monthly, and quarterly. Periodicals may be issued at different time intervals if there is a regular pattern, for example alternating between 9 days and 12 days. The Board also regards periodicals issued every month except for certain designated months of the year such as July and August as issued regularly if issued pursuant to a specific schedule. But published materials issued on an "as needed" basis or only when a certain amount of information has been accumulated are not issued regularly.

Published materials which are not issued at stated intervals are not periodicals. The stated interval requirement is met if the subscriber is informed that he or she will be receiving the published materials pursuant to a specific schedule or at specific time intervals.

We are not certain from the facts you gave in your letters if the Research Notes and Analysis reports are issued regularly and at stated intervals. In addition, we do not know if "Research Sets" refers only to Research Notes and Analysis Reports or if it also includes a book or loose leaf volume. If it includes a book or loose leaf volume and if the Research Notes and Analysis Reports meet the requirements for the periodical exemption, Sales and Use Tax Annotation 385.1100 applies. This annotation reads:

"Loose-Leaf Services. Loose-leaf services or reports concerning taxes, business, and other subjects are issued to a subscriber initially in the form of a complete volume or volumes. Supplements containing current information on the subject are then regularly issued to the subscriber at average intervals of less than three months. Replacement volumes containing updated material are sometimes issued annually with the renewal of a subscription. The subscriber pays a lump-sum price for both the volume and the supplements.

"On these facts, the supplements are exempt periodicals but the initial volumes and the replacement volumes are not. An allocation of the lump-sum price between the volumes and the supplements may properly be based upon the amount which the publisher charges to replace a lost or destroyed volume. 8/15/68."

You also ask whether the entire annual fee for "subscription services" would be nontaxable if the Research Sets are considered to be exempt periodicals. Assuming that the cost of the materials at the conferences is not stated separately and that on-line access to information does not include transfers of tangible personal property, no part of the "subscription service" fees would be taxable.

In your last question you ask if the Research Sets are still considered to be taxable sales of tangible personal property, can Corporation A collect and remit the sales tax only on the fair retail selling price of the Research Sets, even if this amount is not separately stated on the sales invoice. The answer is yes. In this particular transaction, it is immaterial whether the charges for the Research Sets are separately stated or lumped together with charges for services.

Revenue and Taxation Code section 6596 provides the only basis for relief from tax if a taxpayer relies on incorrect written advice from the board. The primary conditions to qualify are that the request for opinion must be in writing and must disclose all relevant facts, including the identity of the taxpayer. Since you have not identified your client or all of the relevant facts, this opinion does not come within the provisions of section 6596 but rather is simply general advice regarding a set of hypothetical facts.

If you have further questions regarding Sales and Use Tax Law, please do not hesitate to write again.

Sincerely,

Elizabeth Abreu
Tax Counsel

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