

M e m o r a n d u m**385.0574.100**

To: Oakland – Auditing (L. H. Woolslayer)

From: Headquarters – Legal (John Abbott)

Subject: O--- A---'s B--- Company – SR -- XX-XXXXXX
A---'s Magazine

In your October 15, 1984 memorandum to the legal section, you ask whether the O--- A---'s magazine qualifies as an exempt periodical under Revenue and Taxation Code section 6362 and Sales and Use Tax Regulation 1590. You enclosed a copy of the 1983 A's Magazine with your memo.

You relate that you have assessed tax on the sales of the magazine for the seasons 1981 through 1983, on the ground that the magazine is not issued at stated intervals. The taxpayer has paid the tax in full and has filed a claim for refund based on its contention that the magazine is an exempt periodical.

In our telephone conversation on November 15, 1984, you stated that the taxpayer is not pursuing this claim for refund at least until such time as you meet with the taxpayer's representatives to discuss this opinion.

You summarize the taxpayer's contentions as follows:

Our assessment was based on the fact that it is not issued at "stated" intervals. The taxpayer states that this is really a matter of form and not substance and aside from formally serializing the issues, the magazine was in fact issued at stated intervals, arguing that:

1. There is substantial editorial change during a season, ranging from 5 to 10 times per five month seasonal period.
2. The particular format following reduced the cost of publication since the advertising material did not completely change with each new issue.

3. There is a regular interval of change and the reader of the magazine realizes this as each new issue is placed on sale.
4. Acknowledges that serial number was not included, but for reasons as listed above the requirements – i.e., stated intervals – are met and being communicated to the reading public.

You also enclosed with your memo a copy of a letter dated September 13, 1984 from R--- L--- of South San Francisco to the O--- A---'s. R--- L---, the printer of the magazine, describes how the magazine has been produced over the past four years. For example, R--- L--- states:

In 1983 the magazine consisted of 132 pages plus cover. Sections that changed were:

- A) The cover changed five times during 1983 including a special cover for opening night.
- B) The change section was 24 pages; page numbers 33 – 44 and 89 – 1—was changed nine times during the year.
- C) The center spread was changed twenty-six times during the season.

(I use this example both because it relates to the 1983 magazine which you enclosed, and because it is representative of the changes detailed for the 1981, 1982, and 1984 seasons).

Finally, you state that the taxpayer requests that we outline the requirements needed to qualify the magazine as an exempt periodical, if we feel it does not qualify as it has been published in the past.

We note that in the 1983 magazine, the “center spread” referred to in R--- L---'s letter is the O--- A---'s and the visiting team's roster, plus a scorecard. The “change section” in the particular issue you enclosed contains three two-page articles, “A---'s Outlook for 1983,” “A--- L--- Preview,” and “Opening Night Fifteen Years Ago,” five pages entitled “meet the A---'s,” which are short biographies of the players, and a one-page quiz, “Test Your Hall of Fame Trivia.” The balance of the change section consists of advertising. Although there are other articles in the magazine, apparently these articles were not changed during the course of the season, since they are not part of the change section.

Our conclusion is that the A---'s Magazine is not an exempt periodical for two reasons, each of which would by itself be sufficient to subject sales of the magazine to tax.

First, the magazine is not issued at stated intervals, as required by Regulation 1590(a)(2). Although it is true that there are different “issues” of the magazine, in the sense that the cover

and the change section are new in each successive publication, the magazine nowhere indicates that this is so. Neither on the front cover nor anywhere inside does the magazine purport to be anything but a single magazine for (in the sample copy you sent) the 1983 season. Our view is that in order for a publication to qualify as one issued at average intervals not exceeding three months, the publication must state in some prominent manner just what issue, within a series of issues, the reader is purchasing. Although the taxpayer claims this elevates form over substance, the fact remains that there is no way for a reader to determine that a given issue of a publication is one of a series of different issues of the same publication unless the issue states in some manner just what interval (monthly, bimonthly, etc.) is represented by the particular issue.

We think the stated interval requirement takes on added significance in a situation where, as here, the great majority of the contents of the magazine does not change from "issue" to "issue." Since the magazine purports only to be the 1983 A---'s magazine, and not, say the June-July 1983 A---'s magazine, no reader will be disappointed to find the magazine largely unchanged from one purchased earlier in the season.

Second, we consider that the A---'s magazine does not meet the requirement of Regulation 1590(a)(2) that each issue must contain news or information of general interest, in the nature of articles appearing in the different issues of the series. We view this requirement to mean that each issue must contain a significant amount of space devoted to new articles which have not appeared in previous editions of the periodical. In the 1983 magazine, only six full pages in the change section consist of articles not reprinted throughout the various editions of the magazine during the 1983 season. Even if we assume that the short biographies of A---'s players in the "Meet the A---'s" section constitute an article, we assume these biographies did not change significantly throughout the various editions of the 1983 magazine, except to reflect roster changes.

Our view is that this magazine would qualify as an exempt periodical in future seasons if: (a) each issue of the magazine clearly stated on its cover or in some other prominent way that it was a separate issue within a series of issues, published at least four times at stated intervals during the season, and (b) each issue contained new articles, not previously published in earlier issues, comprising at least 10% of the space in an average issue.

JA:ss