

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
(916) 445-6493

August 8, 1989

Mr. H--- R---  
R--- & Associates  
XXX --- --- Drive, Suite XXX  
---, CA XXXXX

R--- & Associates – SR -- XX-XXXXXX  
Periodicals – advertising and product publicity

Dear Mr. R---:

In your May 21, 1989 letter to the Board, which was referred to the legal staff for response, you write in summary that you currently charge tax to your clients for whom you publish regular newsletters. You believe the newsletters you publish on a quarterly and more frequent basis qualify as periodicals exempt from sales or use tax under the Board's Regulation 1590(a)(2). You write:

“None of [the newsletters] are themselves advertising, but are, distributed to employees, clients and other interested parties who wish to read about the particular company or association in question. They are seemingly consistent with the spirit of 1590(a)(2).”

“I have charged sales tax to these clients in the past, unless they qualified as a printed sales message under Regulation 1541.5, in which case I have requested, received and have on file the proper form.”

Your questions are as follows: (1) If the newsletters you publish qualify under Regulation 1590(a)(2) as nontaxable periodicals, do you have to charge your clients sales tax? (2) Does it make any difference whether your contract states that you publish the newsletter for your client or that the client publishes the newsletter and you act as the vendor.

Since you did not enclose with your letter representative sample copies of the newsletters you publish, we cannot give you a definite opinion about whether any of those newsletters will or will not qualify as nontaxable periodicals. However, we can give you some general guidelines

regarding the Board staff's interpretation of Regulation 1590(a)(2), and these guidelines should assist you in determining whether or not you are publishing nontaxable periodicals for your clients.

Regulation 1590(a)(2) provided in part:

“Neither does [the term ‘periodical’] include 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.” (Emphasis added.)

Our view is that if a company publishes and distributes to its clients and prospective clients a newsletter of information about the company, its products or services, such a publication is not an exempt periodical within the meaning of Regulation 1590(a)(2) because the publication constitutes advertising in the form of publicity for the company. Of course, as you are aware, the newsletter may qualify as a nontaxable printed sales message under Regulation 1541.5, if delivered to recipients at no charge in accordance with the conditions of that exemption.

On the other hand, if a publication is published by a company for and about its employees, is distributed exclusively to those employees, and consists of news or information of a general interest to its employees, such an employees newsletter may qualify as a nontaxable periodical under Regulation 1590(a)(2). If you print an employee newsletter which qualifies as a nontaxable periodical, and you obtain from the company an exemption certificate in the form set out in Regulation 1590(c), then you should not charge your client sales or use tax on the printing of the publication. It does not matter whether your contract states that you publish the newsletter for your client or that your client publishes the newsletter and you act as the vendor. If the newsletter is exempt from tax as a periodical, then your charges to your client for printing the newsletter are nontaxable.

If you wish to obtain an opinion regarding the taxability of a specific newsletter which you print for a client, you --- send a representative copy to the Board's San Jose office at 100 Paseo de San Antonio, Room 307, San Jose, Ca 95113-1477, or to the Board's legal staff at the address shown above. Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott  
Senior Tax Counsel

JA:jb