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June 25, 1992

Ms. S--- K. T---
President
S--- P--- and G---
XXXX E. XXth Street
--- ---, CA XXXXX-XXXX

Dear Ms. T---:

Your March 31, 1992 letter to Ms. Stella Levy regarding the application of sales tax to the sale of an annual report has been referred to me for reply.

As you noted, Revenue and Taxation Code section 6362.7 which provides an exemption from tax for the sale of periodicals without charge requires that the periodical be regularly issued at average intervals not exceeding three months. However, there is no such requirement in Revenue and Taxation Code section 6362.8 which provides an exemption for sales under certain circumstances of periodicals for distribution by nonprofit organizations.

Specifically, you publish annual reports for a nonprofit foundation which qualifies for tax-exempt status under section 501(c)(3) of the Internal Revenue Code. You sent a sample copy of the 1990-1991 Financial Report of F--- Foundation. The report contains articles which describe the Foundation's accomplishments during the year and the Foundation's financial statements.

You note that the publication is distributed periodically at regular intervals by the Foundation at no charge. The publication contains no commercial advertising. Given this information, you asked whether the sale of the publication would be exempt from tax pursuant to section 6362.8 which provides:

"(a) There are exempted from the taxes imposed by this part, the gross receipts from the sale of, and the storage, use, or other consumption in this state, of tangible personal property that becomes an ingredient or component part of any newspaper or periodical, or any such newspaper or periodical.

- (b) This section shall apply only with respect to any of the following:
- (1) Any newspaper or periodical published or purchased by an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, and to which any of the following apply:
 - (A) Distribution is to the members of the organization in consideration of payment of the organization's membership fee, or to the organization's contributors.
 - (B) The publication does not receive revenue from, or accept, any commercial advertising.
 - (2) Any newspaper or periodical distributed by a nonprofit organization for which both of the following apply:
 - (A) Distribution is to any member of the nonprofit organization in consideration, in whole or in part, of payment of the organization's membership fee.
 - (B) The amount paid or incurred by the nonprofit organization for the cost of printing the newspaper or periodical is less than 10 percent of the membership fee attributable to the period for which the newspaper or periodical is distributed."

We believe that, under the facts you provided, the sale of the annual report to the nonprofit organization for distribution qualifies for exemption from tax under section 6362.8.

The Foundation should issue an exemption certificate in the form prescribed by Sales and Use Tax Regulation 1667, Exemption Certificates, in order for the vendor to consider the sale as exempt.

We hope this answers your question; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr