

**STATE BOARD OF EQUALIZATION**

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July 22, 1986

Dear ---

In your letter to the Board's legal staff, which we received May 23, 1986, you request our ruling that your client, --- --- is not liable for sales or use tax on its sales of "Aileron." You also enclosed promotional material on "Aileron", which you describe as a magazine in video tape format.

You contend that "Aileron" is exempt from tax as a periodical under Revenue and Taxation Code Section 6362. You relate that "Aileron" is sold on a subscription basis only. Each subscriber receives four issues, one per quarter. Each issue consists of eight to twelve 'topical articles' on subjects of interest to pilots. Both the current issue and future issues currently in production have the same format and similar subject matter. To date, there are no advertisements included in these video tapes, although advertising may be included in future issues.

Your view is that "Aileron" meets all the requirements of Sales and Use Tax Regulation 1590 (a) (2) to qualify as an exempt periodical, and the only issue in question deals with the medium through which the magazine is produced. You contend that two sales tax counsel rulings (annotations), specifically, no. 385.0600 and no. 385.0590, are both authority for the principle that the deciding factor in determining whether the requirements of Regulation 1590 are met is not the medium, but rather the topical nature of the subject matter and the continuity of the nature of the articles appearing in the issues.

Opinion:

We cannot agree with your contention that "Aileron" qualifies as an exempt periodical. Instead, our opinion is that your client's sales of "Aileron" are subject to sale and use tax because "Aileron" is a video tape, not publication, notwithstanding that "Aileron" describes itself as a "magazine."

You are correct that, in annotation 385.0060, the legal staff's opinion was that tape recordings of material extracted from medical journals were held to be exempt periodicals. In that case, we regarded the sound version of a periodical as also qualifying as a periodical, and the fact that the publication was recorded on audio tape, not paper, did not make the publication taxable.

However, we feel it goes beyond the legislative intent of Section 6362 to regard a video tape production as an exempt periodical merely because it calls itself a magazine, is sold on a quarterly basis, and contains several segments per tape on the general subject of aviation. We think the common understanding is that video tapes on the one hand, and publications on the other hand, are distinct forms of tangible personal property, and not interchangeable depending on the classification the seller ascribes to them.

For example, suppose a videotape series such as "Aileron" were produced and leased for commercial television showings, rather than sold for home viewing. Undoubtedly, if this were the case, the producer would successfully contend that each production of "Aileron" qualified as a motion picture production, and would constitute nontaxable leases under Revenue and Taxation Code Section 6006(g). We cannot agree with the contention that the same tangible property constitutes both an exempt motion picture production if leased for commercial showings, and also an exempt "periodical" if sold on a subscription basis.

Furthermore, the legislature has specifically provided that leases of video tapes are subject to tax, when rented for private use only. Revenue and Taxation Code Sections 6006(g) (7) and 6010(e) (7). Our view is that this is further indication of the legislative intent to treat video tapes as a separate and distinct form of tangible property without regard to whether its content might resemble the format of a magazine in some respects.

Thus, we cannot agree with your point of view that the medium makes no difference in determining whether tangible property may qualify as exempt periodical. While our opinion is that audio tapes may qualify as exempt, at least if they are the sound version of exempt periodicals, we do not think the periodicals exemption can be extended to include video tapes, regardless of their content, manner of distribution, or frequency of production.

Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott
Tax Counsel

JA:hb
bc: Culver City District Office