

M e m o r a n d u m**385.1350**

To: Headquarters - Petition Unit (IIKL)

Date: May 28, 1976

From: Headquarters - Legal (DJB)

Subject: Sales and Use Tax Petition for Re-determination
Heard in Sacramento on May 4, 1976

This petition was taken under consideration by the Board on May 4, 1976 for further study of the arguments presented to the Board. In particular, the Board requested that the publications sold by Petitioner be compared to the publications before the Board in the petition of --- which were held not to be periodicals and sales of which were ordered taxed prospectively effective January 1, 1973.

At the hearing Petitioner contended that the publications in question were not textbooks or lesson material, but were indistinguishable from other religious publications which are classified as exempt "periodicals" within Section 6362 and Regulation 1590; that the primary use of the publications is not in Sunday schools, but for leisure reading by members of the congregation; and that the same articles are not republished cyclically or repetitiously, but that each issue contains all new articles.

Subsequent to the Board hearing, Petitioner's counsel further informed us that Petitioner concedes the taxability of --- --- --- but that all other publication listed on page 4 of my Decision and Recommendation are protested; that certain of the publications, such as --- and ---, are not used at all in classroom instruction; that certain of the publications are sold to other religious denominations; and that there are other publications which are admittedly designed for classroom use and on sales of which Petitioner pays sales tax.

The Sacramento files on the --- account have been destroyed. The Inglewood District Office sent us the attached material which includes the ---audit papers, Hearing Officer W. E. Burkett's Decision, and Recommendation, and various correspondence.

The material substantiates the impression of the Board members that the publications in -- were reissued cyclically with only some new material added to each reissue. The situation appears to be analogous to the issuance of a new edition of a textbook with updated material.

On page 2 of his Decision, Mr. Burkett states that:

"According to the taxpayer's representative the quarterly items are issued in 12 different quarterly formats and are then repeated. When a new cycle is begun, some new material is added to each issue. The extent of the change cannot be ascertained without copies of issues for a different cycle. None of these are currently available."

In denying the exemption, Mr. Burkett, on page 3, states that:

"While each cycle is said to contain some new material, this is apparently done for the purpose of updating the material. School texts and other teaching aids have been uniformly denied exemption, although they are invariably updated and reprinted."

Tax Counsel Gary Jugum stated in an opinion of December 23, 1971 that the exemption would not apply to Bible study guides and Bible lessons used in a classroom to present a subject matter for study in a regular program of religious education. This, and nothing more, appears to have become the rule applied in the audit, particularly as its application to Petitioner's publications was verified by legal during the audit. But it is noteworthy that in the same letter Mr. Jugum states that:

"Taxpayer --- has segmented three copyrighted texts into quarterly booklet form, and taxpayer reissues the same instructional material quarterly over successive three year periods."

On page 6 of my Decision and Recommendation in this matter, I stated that "The cyclical nature of some of the --- material was not the determinative factor in that decision..." The Board members have now made clear that the cyclical nature was the determinative factor, and that we should consider Petitioner's admittedly noncyclical publications as presenting a new question, not foreclosed by ---.

In our opinion, the cyclical/noncyclical distinction is proper and should become the rule as to Bible study guides such as Petitioner's publications. The textbook type of updating and re-issuance of a basically cyclical publication, as in --- would continue taxable. But noncyclical, quarterly publications, basically comprised of all new material, should be considered exempt "periodicals." A publication being used in conjunction with classroom instructional programs does not hold up as a reason for denying the exemption. The religious nature of the Biblical articles in Petitioner's publications is not, of course, reason for denying the exemption.

Consequently, it is recommended that the petition be granted to the extent of the gross receipts from the sale of the publications listed on page 4 of the Decision and Recommendation, with the exception of the three publications which are conceded.

Should the recommendation of the staff be approved, notification to the taxpayer of the Board's decision will be as follows:

Statement of Board Action

The Board concluded that the publications in question constituted “periodicals” within Revenue and Taxation Code Section 6362 with the exception of --- --- --- --- The Board ordered that the tax be re-determined accordingly and that the petition to that extent be granted.