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**STATE BOARD OF EQUALIZATION**

(916) 327-3400

January 29, 1992

Dear Mr. ---:

I am writing in response to your November 8, 1991 request for legal advice regarding the application of tax to sales of publication by the --- --- --- --- --- (---). --- qualifies for tax exempt status under section 50 I (c) (3) of the Internal Revenue Code. --- has been charging sales tax on its subscriptions. You ask whether tax is still applicable under the new legislation.

Prior to July 15, 1991, all newspapers and periodicals were exempt from sales and use tax. These exemptions were repealed by the Legislature. However, under very recent legislation, a tax exemption has been reinstated for a narrow class of newspapers and periodicals. Specifically, under SB No. 89 and AB No. 23, sections 6362.7 and 6362.8 are added to the Revenue and Taxation Code to read as follows:

"6362.7. 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 which becomes an ingredient or component part of any newspaper or periodical that is distributed without charge and regularly issued at average intervals not exceeding three months, and any such newspaper or periodical."

"6362.8. (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."

Under section 6362.8(1) (B) any periodicals or newspapers sold by --- would be tax exempt since none of the publications accept commercial advertising.

Proposed Sales and Use Tax Regulation Section 1590 defines "periodicals" as:

" ... those publications which appear at stated intervals, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues in respect to continuity of literary character or similarity of subject matter and there must be some connection between the different issues of the series in the nature of the articles appearing in them. Each issue must be sufficiently similar in style and format to make it evident that it is one of a series ..."

The term "periodical" does not include 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."

All of the publications for which you enclosed samples, qualify as tax exempt periodicals under the above definition. These are, "----", "----", "----", "----", "----", and "----."

Please note that even though --- periodicals are now tax exempt, there was no exemption from July 15 through October 31, 1991. For sales and use tax purposes, we consider --- to have been the consumer of its periodicals during this window period. This means that the charges made by the printer were taxable. However, if no subscriptions were entered during the window period then there is no tax owed on costs associated with publication.

I am enclosing a copy of the proposed revisions to Regulation 1590. By copy of this letter we will request that your name be placed on the list of parties interested in receiving notice of public hearings on the proposed regulations.

Sincerely,

Stella Levy  
Tax Counsel

SCL:es 42731 Enclosure

cc: Ms. Janice Masterton