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COGS REVIEW REQUIRED	
REG	1501
DJH	

(916) 445-6493

April 28, 1988



Play-by-mail games

Dear Mr. [REDACTED]:

In your February 16, 1988 letter to the Board's Sacramento District office, which was referred to the legal staff for reply, you ask for a ruling on whether your play-by-mail games are subject to sales tax when sold to California residents. You write:

"[REDACTED] is a moderator of historical, science fiction and fantasy games which are played through the mail in much the same way that chess is sometimes played through the mail.

"When a customer signs up for our game, we send them a rulebook which explains how the game is played. To play the game the player indicates how he will move his units in the game by filling out a form we provide or just sending his move on note paper. We provide the service of evaluating the movements he has made to determine the success of his actions. This back and forth process through the mail may last several years until the game is eventually won or lost.

"It is my opinion that [REDACTED] sells rulebooks for sale which are taxable as printed matter. In addition we provide services in the moderation (serving as the processor and referee) of the games which is a service which should not be taxable under the

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Revenue and Taxation code Sections 5006(a) and (f), 6012(b)(1). All personal property provided with the moderation service is merely incidental to the service.

"We provide a form the player may use to make it easier to explain his actions in our game. But, this form is not required for play of the game. We do not sell the forms. We will and do accept turns submitted on plain paper, customer computer generated forms and on occasion over the telephone. The single sheet of paper form is certainly not what the player is paying \$3.50 or more for when he submits a turn. He is paying for our service in determining the quality of his ideas and their effect within our game." (Emphasis in original).

This letter sets out different facts than in your February 6, 1985 letter to the Board, to which I responded by letter dated May 20, 1985. In summary, your February 6, 1985 letter indicated that the forms and computer cards which you provided to the players were internal parts of the games, and the players submitted all their turns on either the forms or the cards, depending on the game. My May 20, 1985 letter to you therefore concluded that the services you provided as moderator of the play-by-mail games were taxable as a part of the sale of the forms and cards, since the players could not participate without obtaining these items.

In your February 16, 1988 letter, you now relate that while you provide a form for the player to use, the form is not required for the play of the game, and you do not sell the forms. You accept turns submitted on plain paper or in other ways. I cannot tell from your letter whether these new facts relate to different games, or whether all of the games can now be played with optional forms. If some of the games still cannot be played without the purchase of forms or cards, our opinion remains the same as in my May 20, 1985 letter to you.

I am also not certain from the facts set out in your letter how the players obtain the blank forms. If each player when purchasing a rulebook also receives a set of blank forms, we would view this transaction as a sale of both the rulebook and the forms, and the sales tax would apply to the gross receipt which you receive for the sale of both items. (Regulation 1.263-1). In this situation, you should issue to the printer of the forms, as well as the printer of the rulebooks, a resale certificate.

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pursuant to Regulation 1668 in order to purchase the forms ex-tax for resale.

If the players obtain the forms free of charge independently of your sales of the rulebooks and independently of your charges for accepting turns submitted by the players, then our opinion is that with respect to games played in this manner, you correctly contend you are providing a nontaxable service of moderating the play-by-mail games, and the forms you use are incidental to that service, under Regulation 1501. This assumes that all your charges for the turns are optional with the player, and there is not a certain number of turns to which the player is entitled with the purchase of the rulebook. Accordingly, no sales or use tax would apply to the charges you make for the players to submit their turns. However, sales or use tax will apply to your purchase of the forms from your printer. This is because you would be the consumer, not the retailer, of the forms which you use incidentally to your services. Accordingly, you may not issue a resale certificate to your printer for the forms you purchase. (Regulations 1501 and 1500(c)(3)). Furthermore, if you purchase the forms from an out-of-state printer, use tax, rather than sales tax, will apply to your purchase of the forms. You should report and pay this use tax to the Board unless the printer is registered with the Board to collect the tax. (Regulations 1684 and 1685).

I enclose copies of Regulations 1500, 1501, 1668, 1684, and 1685 for your information. Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott
Tax Counsel

JA:jb
Encl