



STATE BOARD OF EQUALIZATION

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• August 22, 1994

Dear: ---

This is in reply to your July 14, 1994 letter regarding the application of sales tax to charges for the Catholic Herald and --- ---, two publications of the --- of ---. You provided the following facts:

"We are a non-profit organization which produces two newspapers for distribution throughout the ---. We have a combined circulation of about 14,000. The suggested donation for the english paper is \$15/year and for the spanish paper is \$10/year. About 50% of our combined circulation is paid. We receive a subsidy from our umbrella corporation, the Roman Catholic Bishop of Sacramento, which funds about one-third of our operating expenses."

You later sent a copy of three consecutive issues of both publications.

The copy of the form you sent us that you note you received from the printer, is an exemption certificate for the sale of "printed sales messages". That exemption certificate pertains to an exemption from sales and use tax for the sale and use of catalogs, letters, circulars, brochures, and pamphlets consisting substantially of printed sales messages for goods and services. (Rev. & Tax Code section 6379.5.) That exemption is not applicable to sales of newspapers and periodicals. Rather, the exemption applicable to the facts you present is provided by Revenue and Taxation Code section 6362.7, 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 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.

"(b) 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 a component part of any periodical regularly issued at average intervals not exceeding three months, and any such periodical, that is sold by subscription and delivered by mail or common carrier.

"(c) For purposes of this section, "periodical" means any publication that appears at stated intervals at least four times per year, but not more than 60 times per year, 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 with 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 does not include printed sales messages, shopping guides, or other 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."

Based on our review of the copies of El Heraldo Catolico and The Catholic Herald, we believe both publications qualify as "periodicals" as defined above. The Board's legal staff has previously taken the position that, when an organization provides tangible personal property for a suggested minimum donation, the organization thereby makes a sale of the property for purposes of the Sales and Use Tax Law. (Bus. Tax Law Guide Anno. 495.0370.)

When the --- sells subscriptions to The Catholic Herald and El Heraldo Catolico by subscription and delivers the publications by mail or common carrier, the sale is exempt from sales tax under subdivision (b) of Section 6362.7. You may issue an exemption certificate to your printer in the form provided as Certificate A of subdivision (c) of the enclosed copy of proposed Sales and Use Tax Regulation 1590, Newspapers and Periodicals.

When you distribute copies of the periodicals without charge, the distribution is exempt from sales and use tax pursuant to subdivision (a) of Revenue and Taxation Code section 6362.7.

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

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD: plh
Enclosure - Proposed Regulation 1590
cc: Sacramento District Administrator - KH