

M e m o r a n d u m**385.1882**

To : Mr. Norman Jung
Staff Tax Auditor
San Jose District Office

Date : May 28, 1992

From : Ronald L. Dick
Senior Tax Counsel

Subject : S--- U---
SR -- XX-XXXXXX

This is in reply to your May 7, 1992 memorandum regarding the application of use tax to the use of books purchased by S--- U---.

You are currently auditing the University. You have discovered that the University purchased a set of books from an out-of-state vendor for the University library of physics. The books are titled "Science Citation Index, 1945 – 1954 – Ten Year Cumulation." The set of books is hardbound and consists of ten volumes. The set of books was purchased separately from bi-monthly editions of paperback volumes titled "Science Citation Index."

The University has taken the position that the cumulative index is an exempt periodical. They argue that the ten-year index is a reference for the paperback volumes of the bi-monthly "Science Citation Index." Both the paperback indexes and the cumulative index list a subject, author, publication, volume, page and year. You do not know whether the subject matter of the index was originally from periodicals or from books. Given this information, you asked our opinion as to whether the publications qualify as "periodicals" for purposes of Sales and Use Tax Regulation 1590. You note that the transactions occurred prior to the July 15, 1991 repeal of Revenue and Taxation Code section 6362.

We believe that the bi-monthly "Science Citation Index" qualifies as a periodical. Although the publication is merely a reference index, we believe that it appears at stated intervals, and each issue contains information of general interest to some particular organization or group of persons. Each issue appears to bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter. There is also a connection between the different issues in the nature of the material appearing in them. In so concluding, we noted Sales and Use Tax Annotation 385.0060 where the legal staff took the position that a computation of bowling league standing and scores of individual league members qualified as an exempt periodical. Also, under Annotation 385.0350, an index of off-market information in a multiple listing book qualified as news or information for purposes of determining whether such a publication qualifies as a periodical.

We agree with your conclusion that the ten-year cumulative index does not qualify as a periodical. It is not issued as one of the series of periodicals. Rather, it is sold completely separate from the series of periodicals. As you noted, Sales and Use Tax Annotation 385.0280 states that, if a periodical has issued a number of volumes in addition to an index volume, the index volume will be considered one of the volumes of the periodical. However, we do not believe the same result obtains when the index is not one of the volumes of the periodical.

I appreciate your well-written memorandum requesting our opinion. Thank you. If all of the Board staff provided such a clear recitation of the facts and supporting arguments as you did, our job on the legal staff would be much easier.

RLD:sr

cc: San Jose District Administrator