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**STATE BOARD OF EQUALIZATION**

February 17, 1971

Mr. N--- E. B---  
G---, D--- & C---  
Attorneys at Law  
XXX --- ---Street  
--- ---, CA XXXXX

SN -- XX XXXXXX  
P--- S--- Publishing  
Co., Inc.

Dear Mr. Barker:

This is with reference to the petition of P--- S--- Publishing Company, Inc., and the hearing held on the matter last December 1, in Hollywood, California.

Generally speaking, we are confronted with a situation where a corporation has two divisions. One of the divisions is engaged in making retail sales of educational and training aids to California residents through salesmen who live and work in California. The other division sells exempt periodicals; i.e., P--- S--- and O--- L---, and in addition, sells clothbound books containing topics dealing generally with those in the magazine periodicals. The books were offered to members on a monthly basis, orders are placed by mail and received in New York and are filled there with delivery to the customers being by return mail. You state that the educational aids salesmen do not solicit orders for the books. The book sales activity does not include salesmen in California, no offices in the state, no merchandising in the state, and no other kind of representatives in the state.

As we see it, the issue is one involving the jurisdiction to require P--- S--- Publishing Co., Inc., to collect the use tax on retail sales of books to California residents under section 6203 of the Revenue and Taxation Code. Once jurisdiction is established, we believe the indications in the decisions are that the requirement to collect use tax extends to all sales to consumers made by the corporation over which the jurisdiction has been established.

We believe you make your argument quite clear. It appears to rest on what is apparently an interpretation of section 6203 of the Revenue and Taxation Code. Section 6203 requires collection of the use tax by a seller "having any representative" in the state "for the purpose of selling, delivering, or taking orders for any tangible personal property". (Emphasis added.) You contend that even though P--- S--- has representatives in California for the purpose of selling the educational

and training aids, they are not selling, delivering or taking orders for the tangible personal property on which the use tax liability is being asserted.

Recently the Illinois Supreme Court was confronted with an almost identical issue in Reader's Digest Association, Inc. v. Mahin (Illinois Supreme Court, No 42055, January 20, 1970.)

In the Illinois case the court held that a retailer is considered to be maintaining a place of business in Illinois via a subsidiary, even though the subsidiary was not connected with the item subject to tax. Appellant sold books and records through the mails, and subscriptions to an exempt periodical known as "Reader's Digest". (See Commerce Clearing House, State Tax Reporter, Illinois, New Matters, 200-536.)

Reader's Digest (plaintiff) is a Delaware Corporation with office headquarters in New Castle, New York, and is not licensed to do business in Illinois. It has no office, sales house, warehouse, real or tangible personal property, or telephone listing in Illinois.

Plaintiff publishes and sells subscriptions to Reader's Digest, which is exempt from Illinois sales and use tax. In addition, plaintiff publishes and sells books and phonograph albums. All book and album orders are sent by mail to plaintiff's New York offices. They cannot be purchased in Illinois. Orders are filled and shipped to customers by mail only.

Plaintiff owned two subsidiaries, Reader's Digest Sales and Services, Inc., and Reader's Digest Services Incorporated. In addition, plaintiff holds a majority interest in Quality School Plan, Incorporated. Defendant contended that the activities of the three subsidiaries in Illinois subjected plaintiff to use tax liability on the mail order sales, none of which were solicited by or through any of the three subsidiaries. Quality School Plan had about nine salesmen in Illinois who solicited sales of materials which were published by Reader's Digest Services, Incorporated.

The Illinois Supreme Court held that through its solicitors in the State of Illinois, plaintiff would be liable for use-tax collection on its magazine sales, absent its exemption. However, this exemption did not extend to other products, i.e., books and albums, sold to Illinois residents. Considering the full benefits flowing to plaintiff's aggregate business from its resident solicitors and local advertising, (without further examination of the other subsidiaries) the court held that there was an adequate basis for use-tax liability.

June 29, 1970. Appeal from the Supreme Court of Illinois. The appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari is denied. Mr. Justice Douglas is of the opinion that probable jurisdiction should be noted. Reader's Digest Association, Inc., Appellant, v. George S. Mahin, Director of Revenue of Illinois, U.S. Supreme Court Reports, 26 L.Ed.2d 786 (Memorandum Cases).

Mr. N--- E. B---  
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In summary, it is concluded that California has sufficient jurisdiction over P--- S--- Publishing Co., Inc., to require it to collect use tax on sales of books to California residents. Accordingly, we are recommending that the petition be denied.

The record indicates that a hearing before the board was requested. If this is still your client's wish, it will be granted. If not, please execute two of the three waiver of hearing forms enclosed. The third is for you files.

Very truly yours,

Robert H. Anderson  
Tax Counsel

RHA/vs