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August 11, 1994

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Ms. R--- A--- H---  
Controller  
E--- P---  
XXXX XX ---  
---, CA XXXXX

Re: **SR -- XX-XXXXXX**

Dear Ms. H---:

This is in reply to your June 24, 1994 letter regarding the application of sales tax to your sales of newspapers and periodicals.

You asked whether the delivery requirements are the same for newspapers and periodicals as they are for printed sales messages in order for the sale of the newspapers and periodicals to be exempt. No, the delivery requirements are different.

There are two Revenue and Taxation code sections that provide exemptions for the sale of newspapers and periodicals. The sections are:

“**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.

“(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.

“**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 regularly issued at average intervals not exceeding three months, or any such newspaper or periodical.

“(b) This section shall apply only with respect to any of the following:

(1) Any newspaper or periodical that is published or purchased by an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is distributed to the members of the organization in consideration of payment of the organization's membership fee, or to the organization's contributors.

(2) Any newspaper or periodical that is published by an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and does not receive revenue from, or accept, any commercial advertising.

(3) 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.”

Enclosed is a copy of Sales and Use Tax Regulation 1541.5, Printed Sales Messages, and proposed Sales and Use Tax Regulation 1590, Newspapers and Periodicals, for your further information.

As you can see, the exemption provided by section 6362.7, subdivision (b), for the sale of periodicals by subscription has a critical delivery requirement. Under that exemption, the sale of periodicals that are sold by subscription is exempt only when the seller of the periodical delivers them to the subscribers by mail or common carrier. If you sell periodicals to a publisher, you are not required to deliver the periodicals to the publisher by common carrier, and you are not required to deliver the periodicals to the subscribers. Rather, a publisher who makes exempt sales of periodicals by subscription may issue an exemption certificate or a resale certificate to you, and you may deliver the printed matter to the publisher by any means. Section 6362.7 requires the publisher to deliver the periodicals to the recipients by mail or common carrier in order for the publisher's sale to qualify as exempt.

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

Enclosures - Regulation 1541.5  
Proposed Regulation 1590

cc: --- District Administrator - --