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August 30, 1994

BURTON W. OLIVER
Executive Director

Mr. J--- I---
C--- P--- News
P. O. Box XXXXXX
---, CA XXXXX

Dear Mr. I---:

This is in response to your letter received by us on July 20, 1994 regarding the application of sales tax to publications.

You state that in some cases, you distribute the publications free of charge by placing them in racks inside stores or in vendor boxes outside the stores. In other cases, you distribute the publications by subscription. You have not provided us with copies of the publications, but it appears from your letterhead that the publications contain news information presented in cartoon form. Since you state that the subscriptions are "for 1 year/12 issues," I assume that the publications are issued monthly.

Retail sales of tangible personal property in California are subject to sales tax, which is measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) A sale of printed literature by a publisher is subject to tax unless the sale is for resale or is specifically exempt by statute. (Reg. 1543(b)(6).)

The sale and use of newspapers and of periodicals are exempt from tax under certain circumstances, discussed below. One exemption relevant to newspapers and periodicals is set forth in Revenue and Taxation Code section 6362.7, which provides:

"Newspapers and periodicals distributed without charge; periodicals.

(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."

If your publication is a newspaper, your sales of it would not qualify for an exemption under section 6362.7; however, the sale to you of the publication (e.g., the printer's printing of it for you, or the sale of paper incorporated into it) or your use of it would be exempt with respect to those copies you distribute without charge. The definition of "newspaper" is set forth in Regulation 1590, a copy of which is enclosed. The remainder of this opinion is based on the assumption that the publication is not a newspaper. Thus, it must constitute a periodical to qualify for exemption under section 6362.7.

Revenue and Taxation Code section 6362.7(c) provides that for purposes of this section, a periodical is 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 must:

- (1) contain news or information of general interest to the public or to some particular organization or group of persons;
- (2) bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter;
- (3) be connected to the other issues of the series in the nature of the articles appearing in them; and
- (4) be sufficiently similar in style and format to make it evident that it is one of a series.

The term "periodical" 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.

Since your publication is issued monthly, it meets the requirement of being issued at least four times per year but not more than 60 times per year. The information the publication

presents, the news in cartoon form, is of general interest to the particular group of persons who enjoy reading the news in such a form. We cannot determine whether the publication meets the other three requirements without looking at several copies of it. If the publication satisfies the second, third, and fourth elements above, it qualifies as a periodical.

If the publication qualifies as a periodical as defined in subdivision (c) of Revenue and Taxation Code section 6362.7, then when it is distributed without charge, both the printer's sale to you and your use of the publication are exempt from tax. As long as the periodicals are in fact distributed free of charge, this exemption would apply without regard to whether the word "free" is printed on the cover of the periodical or elsewhere. When you charge for the distribution, then your sales of the publication to California consumers are subject to sales tax unless they are sold by subscription and delivered by mail or common carrier.

As mentioned above, a retail sale is a sale for any purpose other than resale. Without regard to whether your publication qualifies as a periodical or a newspaper, the printer's sales to you are nontaxable sales for resale in the situations in which you sell the publication by subscription. For such situations, you may issue a resale certificate to the printer.

If your publication does not qualify as a periodical under section 6362.7, then sales to California consumers are subject to sales tax. Sales to out-of-state consumers, however, may be exempt under Revenue and Taxation Code section 6396, which provides an exemption for sales in interstate commerce. This exemption is explained in subdivision (a)(3)(B) of Sales and Use Tax Regulation 1620:

"Shipments Outside the State--When Sales Tax Does Not Apply. Sales tax does not apply when the property pursuant to a contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer, by means of:

"1. Facilities operated by the retailer or

"2. Delivery by the retailer to a carrier, customs broker or forwarding agent whether hired by the purchaser or not, for shipment to such out-of-state point. As used herein the term 'carrier' means a person or firm regularly engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers. The term 'forwarding agent' means a person or firm regularly engaged in the business of preparing property for shipment or arranging for its shipment. An individual or firm not otherwise so engaged does not become a 'carrier' or 'forwarding agent' within the meaning of this regulation simply by being designated by a purchaser to receive and ship goods to a point outside this state"

Thus, if the contract of sale requires you to ship the publication outside California by common carrier, and you in fact do so, that sale is an exempt sale in interstate commerce for which you may issue a resale certificate to the printer.

In summary, if your publication qualifies as a periodical under Revenue and Taxation Code section 6362.7 and is distributed free of charge, the sale to you and your use of that publication are exempt from tax. You are not required to include the word "free" anywhere in your publication in order for the publication to qualify under section 6362.7. When you charge for the distribution of the publication, your sales to California consumers are subject to sales tax unless they are sold by subscription and delivered by mail or common carrier. Sales of the publication shipped out-of-state are exempt from tax if they meet the requirements of Regulation 1620.

If you have further questions, please feel free to write again.

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:cl

cc: --- District Administrator