

Jarvis, Sharon

From: Jarvis, Sharon
Sent: Friday, September 17, 2004 2:55 PM
To: Rosenthal, Dave
Cc: Lyle, Geoff; Watkins, Cecilia Anderson, Vic
Subject: Annot. 385.0540 (5/4/70)

This annotation should be deleted. It is out of date due to changes to the law concerning newspapers and periodicals since the 1970 backup letter was written. RTC sections 6263.7 and 6263.8 now exist, which they did not in 1970, and Reg. 1590 is significantly different in content today than Ruling 50 was in 1970.



STATE BOARD OF EQUALIZATION

May 4, 1970

Gentlemen:

Your letter of April 7, 1970 directed to Mr. Charles Carroll of our San Bernardino office has been referred to this office for reply. You raise, in effect, a question as to the application of our Ruling 50, "Newspapers and Periodicals" (copy enclosed) in a certain hypothetical situation.

You ask, "Assume that a newspaper qualifies as tax exempt because it prints 10% or more news at least 50% of the time, if this same newspaper solicits a printed supplement to insert in its pages, then what becomes of [these] percentage[s]?"

In our opinion the percentage test remains the same. The publisher of the paper must compute his 10 percent news content on the basis of the total number of pages he ends up with when he includes the insert.

The problem for the printer arises, as you point out, from the fact that the insert may be printed by another printer. Neither the printer of the newspaper nor the printer of the insert knows whether the total number of pages of advertising matter exceeds 90 percent of the pages in more than 50 percent of the issues of the paper.

You ask, then, "If the publisher of the tax exempt paper loses his exemption because of accepting inserts that decrease his news percentage, then who is liable for the collection of the tax, the printer of the paper (which at the time of printing appears to be exempt?) or the printer of the insert, the item which causes the paper to exceed its news/advertising ratio?"

As Ruling 50 provides, a sale to a publisher of paper or other tangible personal property which becomes an ingredient or component part of a newspaper or periodical regularly issued at average intervals not exceeding three months may be deducted in computing the measure of tax either (1) as a sale for resale if the newspaper or periodical should be resold, or (2) as an exempt transaction if the newspaper or periodical is to be distributed by the publisher without charge.

Publishers are authorized to issue and printers are authorized to accept resale certificates in the form specified in paragraph (c) of Ruling 50. Where a printer sells printed newspapers or inserts to its customer and does not take such a certificate, or takes such a certificate knowing that the publisher issuing the certificate is not entitled to the newspaper exemption, the printer is

liable for the tax. Where the newspaper is printed by one printer and the inserts are printed by another, each would be liable for the tax due on its sales if each had failed to take an exemption certificate or had taken the certificate knowing that the issuer was not entitled to the exemption. Where a certificate is taken in good faith, the publisher, and not the printer, would be liable for the tax due should the publisher fail to meet the requirements for the exemption.

Very truly yours,

Gary J. Jugum
Assistant Tax Counsel

GJJ:ab [lb]