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**STATE BOARD OF EQUALIZATION**

(916) 445-2641

July 22, 1976

Dear Mr.

This is in response to your letter of June 30, 1976, which we received on July 13.

You have raised a question as to the application of the tax to certain cassette recordings to be sold on a subscription basis in conjunction with your "Folk Mass and Modern Liturgy" magazine.

It is your position that sales of cassette recordings may qualify for exception under our Regulation 1590 "Newspapers and Periodicals."

"--- --- ---" is published eight times a year, during the months of January, February, March, April, and October, and with combined issues for May/June, September/October, and November/December.

Each issue of the printed periodical contains several pages of religious music, and the cassette recordings contain what you describe as demonstration performances of the music for two consecutive issues of the periodical. It is your contention that since the audience for your publication views its content as news of information in the field in which they work (namely, religious music or religious music education), and since the cassettes have elements of continuity and since they are published regularly at stated intervals, the recordings may qualify for exemption.

The recordings in question are available as stereo cassettes or as eight-track cartridges. Your publication states as follows:

"Each of the compositions printed on our pages is available on a stereo recording. We believe these supplemental recordings are valuable because we know that it is not always possible to represent music exactly in written form, especially contemporary songs with guitar accompaniment.

“These recordings make it easy to learn the music in each issue. Other uses range from sheer entertainment to use in the classroom. They make excellent background music whether for meditation or highway listening.”  
(Emphasis added.)

Back issues of the printed periodical are available for \$1.50 and back issues of the tapes are, with a single exception, available for \$4.50.

We are of the opinion that tax will apply to the sale of the tapes in question even though the tapes may be sold with the printed periodical. These tapes, while serving some instructional function, do not differ materially from any other recorded music. We are of the opinion that it was not the intent of the legislature, in providing an exemption for periodicals, to exempt this type of recorded music. As our regulation makes clear, not all items which are issued on a periodic basis qualify for exemption although there is an element of continuity in this series of recorded music, we are of the opinion that the tax applies. We note that we have viewed as taxable in the past a series of books issued on a regular basis dealing with the general theme of nature, where each book could be viewed as a publication complete in itself.

Very truly yours,

Gary J. Jugum  
Tax Counsel

j :alictilton  
bc: San Jose - District Administrator