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December 29, 1993

Re: ---

Dear ---

This is in response to your letter dated September 13, 1993. You enclosed three publications and you ask whether they qualify as either printed sales messages or periodicals.

Revenue and Taxation Code section 6379.5 provides an exemption for certain sales of brochures, circulars, catalogs, and pamphlets consisting substantially of printed sales messages. If your publications are printed sales messages, certain requirements must be satisfied in order for the printed sales message exemption to apply. Those requirements are explained in Regulation 1541.5(b) as follows:

“[T]ax does not apply to the sale of printed sales messages which are:

“(1) Printed to the special order of the purchaser;

“(2) Mailed or delivered by the seller, the seller's agent or a mailing house acting as the agent for the purchaser, through the United States Postal Service or by common carrier;

“(3) Received by any other person at no cost to that person who becomes the owner of the printed material.”

In order for the publications to qualify as a printed sales message, they must be for the principal purpose of advertising or promoting goods or services. (Reg. 1541.5 (a) (1).) In other words, more than 50 percent must be for the purpose of advertising or promoting goods or -services.

You sent us copies of the following publications: (1) a journal, entitled “3Tech” which is published quarterly and sent free to its subscribers; (2) a bimonthly newsletter entitled "Net Age" which is sent free to its subscribers; and (3) a publication entitled "3Seller" which we assume is free to its subscribers. We did not receive any information on the frequency of the printing of 3Seller.

In determining whether a publication qualifies as a printed sales messages, we use the following analysis. If there is a mixture of advertising and promotional material on a page or in an article, the principal purpose (over 50 percent) of the page or article determines whether its principal purpose is for providing information or advertising goods and services. “Net Age” has a total of 19 full pages, 16 pages plus an insert equal to three pages (pages 1 and 2 of the insert are each one-half page, and pages three and four are full pages for a total of three full pages). If ten pages or more are advertising, then Net Age qualifies as a printed sales message, but if ten pages or more are informational or for other non advertising purposes, then it does not qualify.

Some of the articles in Net Age are for the principal purpose of informing its readers of current technology and other information, and not for the principal purpose of advertising specific goods and services. These are: the article on pages 1, 3, 4, and 5, and the articles on pages 2, 9, and 14. Page 15 includes general information, for a total of 8 non advertising pages (although there is some advertising on page 5, most of the page consists of the informational article so the principal purpose of that page is non advertising). With respect to the insert, the two half pages, 1 and 2, are for advertising and equal one page of advertising. Neither page 3 nor page 4 of the insert is advertising. Thus, nine of nineteen pages of Net Age are for advertising, or less than 50 percent. Net Age therefore does not qualify as a printed sales message.

Based on the analysis we have provided in regard to Net Age, you can determine, by using the same analysis, if the other two publications, or future publications, qualify as printed sales messages.

You also ask if your journal or newsletters qualify as periodicals. Revenue and Taxation Code section 6362.7 discusses the periodical exemption:

“(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.”

“Periodical” does not include printed sales messages, shopping guides, or other publications of which the advertising portion exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period, including product publicity. (Rev. & Tax. Code § 6362.7 (b), Reg. 1590 (a) (2).)

In order for the sale of the publication to be exempt under section 6362.7(c), the publication must qualify as a periodical. For purposes of that section, “periodical” is further defined as a publication that appears at stated intervals at least four times per year but not more than 60 times per year. (Rev. & Tax. Code § 6362.7(c).) Two of the publications, Net Age and 3Tech, satisfy this requirement and we assume the newsletter 3Seller is published at least four times per year and not more than 60. Another requirement is that each issue must contain information or news of general interest to the public or to some particular group of persons or organization. Net Age is for the data network professional, 3Tech is a technical journal and 3Seller is a newsletter for resellers, and we assume the information is of general interest to the targeted group. Thus, all three satisfy this requirement. Also, there must be a relationship to prior or subsequent issues with respect to similarity of subject matter or continuity of literary character and there must be some connection between the different issues of the series in the nature of the articles appearing in them. We assume that this is the case with each publication. Another requirement is that each issue must be sufficiently similar in style and format to make it evident that it is one of a series. We assume that this requirement is also satisfied with regard to each publication.

Based on the facts and assumptions set forth herein, the periodical exemption applies provided the advertisement portion for each publication does not exceed 90 percent in more than one-half of the issues within a 12-month period.

Please note that if any of the assumptions-made herein are incorrect, the conclusion may be different. We are enclosing copies of Regulation 1541.5 and proposed Regulation 1590 for your information. If we can be of further assistance, please feel free to write again.

Sincerely

Rachel M. Aragon
Staff Counsel

RMA:jlh
Enclosures
bc: District Administrator (GH)