

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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November 27, 1989

REDACTED TEXT

Dear Mr. REDACTED TEXT:

This is in reply to your September 1, 1989 letter regarding the application of sales tax to your charges for the design and production of a newsletter which you prepare.

You sent for our review the October 1988 and the December 1988/January 1989 issues of the REDACTED TEXT, which is published by the REDACTED TEXT, a nonprofit organization. You note that the four to eight page newsletter is published each month excluding January and July, and each issue follows the same format. You explained that you currently design, layout, and prepare camera-ready art for each issue of the newsletter and occasionally may contract for its printing. Given this information, you asked:

- “A. Are we required to collect sales taxes on the design and production of camera-ready art for this newsletter?
- B. Are we required to collect sales taxes on the resale of printing for this newsletter?
- C. If we are not required to collect sales taxes on this newsletter, can we receive reimbursement for such payments made in the past, so that we may give our client appropriate credit for their payment of sales taxes?”

We first note that the California sales tax is imposed on retailers for the privilege of making sales at retail in this state. (Rev. & Tax. Code § 6051.) The amount you collect from your customer is reimbursement for the tax. Whether or not you collect the reimbursement is a matter of contract between you and your customer (Civil Code § 1656.1.)

Section 6362 of the Revenue and Taxation Code provides at subdivision (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

regularly issued at average intervals not exceeding three months and any such newspaper or periodical.”

Sales and Use Tax Regulation 1590, Newspapers and Periodicals, defines “periodical” at subdivision (a)(2):

“The term ‘periodical’ as used herein is limited to those publications which appear at stated intervals, 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 in 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....”

Based on our review of the issues you sent of the REDACTED TEXT and your explanation, we conclude that the publication qualifies as a periodical under Regulation 1590. If you contract with the REDACTED TEXT only to produce and sell the printed matter which consists of the newsletter, your total gross receipts from the sale of the printed matter is exempt from tax. In such case, if you only incidentally produce the camera-ready art for your own use as a manufacturing aid, and you do not transfer title to the camera-ready art to the client, or possession of the camera-ready art to the client or to a third party on behalf of the client, then you are the consumer of the camera-ready art. Tax applies to the sale to you of the materials which you use in producing the camera-ready art.

A different result follows when you sell the camera-ready art to the client. In such case, your sale of the camera-ready art to the client is subject to sales tax regardless that the sale of the printed matter to the client is nontaxable. For example, assume that you contract only to provide camera-ready art for the client, and the client had separately contracted with a printer for the printing. Your delivery of the camera-ready art in California to the client, or to the printer for the benefit of the client, would result in your making a taxable sale of camera-ready art regardless that the printer’s sale of the printing of the newsletter qualifies as exempt. Similarly, of course, if you sell both the nontaxable printing and the camera-ready art to the client, tax applies to your sale of the camera-ready art measured by the total charge for the camera-ready art.

If you have made exempt sales of the periodical to the REDACTED TEXT, you may claim a refund of sales tax by filing a claim with the Board. You should direct any claim for refund to the State Board of Equalization Refund Unit, P.O. Box 942879, Sacramento, CA 94279-0001. The claim for refund need not be in any specific form but must be in writing and state the specific grounds upon which the claim is founded. Generally, you should file the claim within three years from the last day of the month following the close of the quarterly period for which the overpayment was made.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD:sr

bc: Oakland District Administrator