



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001
TELEPHONE (916) 920 - 7445

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September 29, 1994

BURTON W. OLIVER
Executive Director

X-----

Re: X-----

Dear X-----,

This is in response to your letter of July 21, 1994 regarding the application of sales tax to sales of a publication you print.

X----- is a publication of California State University, X----- and it is published every other Monday except during academic recesses. You provided one copy of the publication, and 75 percent of the written portion of that copy consists of a list of students who are scholarship recipients. The rest of the written portion consists of a calendar of upcoming events including student orientation events and children's sports camps.

Retailers, such as printers and publishers, owe sales tax on their gross receipts from the retail sales of tangible personal property in California unless the sales are specifically exempt from tax 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,) Unless a sale is for resale or is exempt, that sale will be subject to tax. You have asked whether "The View" is a printed sales message or a newsletter. There are exemptions from sales tax for certain sales of printed sales messages (Rev. & Tax. Code §6379.5) and periodicals (Rev. & Tax. Code §§ 6362.7, 6362.8), as discussed below.

Regulation 1541.5 explains the exemption provided by Revenue and Taxation Code section 6379.5 for certain sales of printed sales messages. A printed sales message is defined as a catalog, circular, brochure, or pamphlet printed for the principal purpose of advertising or promoting goods or services. (Reg. 1541.5 (a) .) Since the issue you provided to us consists primarily of the list and calendar discussed above, that issue of X----- is not printed for the principal purpose of advertising or promoting goods or services; therefore, it is not a printed sales message and your sales are not exempt under section 6379.5.

Your sales may, however, be exempt under Revenue and Taxation Code section 6362.7, which provides:

“(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.”

Subdivision (c) of section 6362.7 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 X----- is issued once every two weeks except during academic recesses, it meets the requirement in section 6362.7 of being issued at least four times per year but not more than 60 times per year. The information contained in the one copy of X----- provided to us is of general interest to students of California State University X----- . Without looking at a minimum of three consecutive issues of the publication, we cannot determine whether it meets the other three requirements. If the publication satisfies all of the requirements of section 6362.7(c), it qualifies as a periodical.

Although you have not provided us with such information, it appears that the publication is distributed without charge. If it qualifies as a periodical as defined in subdivision (c) of section 6362.7 and is distributed without charge, the sale and use of the publication are exempt from tax. If California State University, X----- charges for the distribution, its sales of the publication to California consumers are subject to sales tax unless the publication is sold by subscription and delivered by mail or common carrier, or unless it qualifies for exemption under Revenue and Taxation Code section 6362.8. As relevant here, section 6362.8 provides:

“(a) There are exempted from the taxes imposed by this part, the gross receipts from the sale and the storage, use, or other consumption in this state, of tangible personal property that becomes an ingredient or component part of any newspaper or periodical regularly issued at average intervals not exceeding three months, or any such newspaper or periodical.

“(b) This section shall apply only with respect to any of the following:

“(1) Any newspaper or periodical that is published or purchased by an organization that qualifies for tax-exempt status under Section 501 (c) (3) of the Internal Revenue Code and is distributed to the members of the organization in consideration of payment of the organization's membership fee, or to the organization's contributors.

“(2) Any newspaper or periodical that is published by an organization that qualifies for tax-exempt status under Section 501 (c) (3) of the Internal Revenue Code and does not receive revenue from, or accept, any commercial advertising.”

The only difference between the definition of "periodical" for purposes of section 6362.7 and section 6362.8 is that under section 6362.8, there is no upper limit on the number of issues per year.

X----- is issued at least every three months. If it qualifies as a periodical and if the California State University qualifies for tax exempt status under section 501(c) (3) of the Internal Revenue Code, then your sales to the university of X----- are exempt from tax if the university does not receive revenue from, or accept, any commercial advertising.

As mentioned above, a retail sale is a sale for any purpose other than resale. Even if the publication does not qualify as a periodical, your sales to the University are not taxable if the University sells the publication. If so, the University may issue a resale certificate to you (see Reg. 1668, enclosed) and its sales will be taxable. Also enclosed is a copy of Regulation 1590 which explains the application of tax to sales of periodicals.

Again, since you have not provided us with several consecutive issues of the publication, we cannot say with certainty that the publication qualifies as a periodical or that the sales of the publication are exempt from tax. If you have further questions, please feel free to write again.

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:cl

Enclosure