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STATE OF CALIFORNIA

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March 27, 1997

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Acting Member  
Fourth District, Los Angeles

REDACTED TEXT

E. L. SORENSEN, JR.  
Executive Director

Dear REDACTED TEXT:

Your March 3, 1997 letter to Mr. Johan Klehs, Vice Chairman of the California State Board of Equalization, has been referred to the Board's legal staff for reply. You asked for the application of California sales and use tax to charges based on the following facts:

"Corporation 'X' is a non-profit corporation that qualifies as a tax-exempt business league under Internal Revenue Code Section 501 (c)(6). Corporation 'X' sells periodicals and publications by mail order to customers throughout the country. Corporation 'X' also conducts seminars for members of a certain profession throughout the country."

Before turning to the specific issues you present, we provide the following brief overview. As you may know, California does not provide for a general exemption from sales or use tax when the retailer is a nonprofit organization. The Revenue and Taxation Code provides the following exemptions from the sales and use tax for the sale or use of newspapers and periodicals:

"6362.7. (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.

"(c) For purposes of this section, 'periodical' means 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 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 with 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. The term 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.

"6362.8. (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 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.

"(3) Any newspaper or periodical distributed by a nonprofit organization for which both of the following apply:

"(A) Distribution is to any member of the nonprofit organization in consideration, in whole or in part, of payment of the organization's membership fee.

"(B) The amount paid or incurred by the nonprofit organization for the cost of printing the newspaper or periodical is less than 10 percent of the membership fee attributable to the period for which the newspaper or periodical is distributed."

Enclosed is a copy of Sales and Use Tax Regulation 1590, "Newspapers and Periodicals, which provides the State Board of Equalization's interpretation of sections 6362.7 and 6362.8.

#### Issues

"Whether the following sales and/or services provided by Corporation 'X' are subject to sales/use tax:

"1-A. Sales of publications with the characteristics set forth below.

- a. The publications are published in printed or written form at annual intervals. It should be noted that the publications are sold and distributed at one fixed time per year.
- b. The publications do, either singly or when successive issues are put together, constitute a book.
- c. The publications are available for circulation to the public.
- d. The publications contain matters of interest related to a professional services industry.
- e. The publications have continuity as to title and general nature of content from issue to issue.
- f. Each issue of the publication does not contain a variety of articles by different authors devoted to a professional services industry.
- g. The publication has not been classified by the United States Postal Service as one which is entitled to second class mailing privileges.

"1-B. Sales of publications with the characteristics set forth below.

- a. The publications are published in printed or written form at annual intervals.
- b. The publications do, either singly or when successive issues are put together, constitute a book.
- c. The publications are available for circulation to the public.
- d. The publications contain matters of interest related to a professional services industry.
- e. The publications have continuity as to title and general nature of content from issue to issue.
- f. Each issue of the publication contains a variety of articles by different authors devoted to a professional services industry.
- g. The publication has not been classified by the United States Postal Service as one which is entitled to second class mailing privileges.

"1-C. Sales of publications with the characteristics set forth below.

- a. The publications are published in printed or written form at monthly stated intervals.

- b. The publications do not, either singly or when successive issues are put together, constitute a book.
- c. The publications are available for circulation to the public.
- d. The publications contain matters of interest related to a professional services industry.
- e. The publications have continuity as to title and general nature of content from issue to issue.
- f. Each issue of the publication contains a variety of articles by different authors devoted to a professional services industry.
- g. The publication has been classified by the United States Postal Service as one which is entitled to second or third class mailing privileges.

"1-D. Sales of publications with the characteristics set forth below.

- a. The publications are published in printed or written form at annual intervals. It should be noted that the publications are sold and distributed at different times throughout the year as orders are placed for the publications.
- b. The publications do, either singly or when successive issues are put together, constitute a book.
- c. The publications are available for circulation to the public.
- d. The publications contain matters of interest related to a professional services industry.
- e. The publications have continuity as to title and general nature of content from issue to issue.
- f. Each issue of the publication does not contain a variety of articles by different authors devoted to a professional services industry.
- g. The publication has not been classified by the United States Postal Service as one which is entitled to second class mailing privileges."

Generally, tax applies to X's sales of the publications you describe in issues 1-A, 1-B, 1-C, and 1-D.

We assume the publication you describe in issue 1-C is a "periodical" as defined in Regulation 1590, subdivision (a)(2). In that case, X's sales of the periodical are exempt when X sells them in accordance with Revenue and Taxation Code section 6362.7, subdivision (b), or section 6362.8, subdivision (b)(3).

"2. Subscription fees for publications described in issue #1-C."

As noted above, sales of periodicals by subscription and delivered by mail or common carrier are exempt from tax.

"3-A. Charges by Corporation 'X' to advertisers for advertisements either placed directly in the publications described in issue # 1-A, or distributed as inserts/supplements with the publications described in issue # 1-A.

"3-B. Charges by Corporation 'X' to advertisers for advertisements either placed directly in the publications described in issue #1-B, or distributed as inserts/supplements with the publications described in issue #1-B.

"3-C. Charges by Corporation 'X' to advertisers for advertisements either placed directly in the publications described in issue #1-C, or distributed as inserts/supplements with the publications described in issue #1-C.

"3-D. Charges by Corporation 'X' to advertisers for advertisements either placed directly in the publications described in issue #1-D, or distributed as inserts/supplements with the publications described in issue #1-D."

The application of Corporation X's charge to advertisers depends upon whether Corporation X transfers tangible personal property to the advertisers or to third parties on behalf of the advertisers. For example, if Corporation X merely sold advertising space on one of the pages of its publications to an advertiser, and did not transfer any layouts to its customer in tangible form, Corporation X would not make a sale of tangible personal property to the customer. We would reach the same result if Corporation X were to sell advertising space to multiple advertisers on each page of an insert or supplement to the publications.

We believe that when Corporation X contracts to furnish a separate individual insert, supplement, or sheet of paper for each advertiser, Corporation X thereby contracts to sell tangible personal property to the advertiser. In that event, tax would apply to Corporation X's sale of the insert or supplement to the advertiser unless the sale qualified for an exemption.

A relevant exemption from tax is provided by Revenue and Taxation Code section 6379.5, which provides:

"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 catalogs, letters, circulars, brochures, and pamphlets consisting substantially of printed sales messages for goods and services printed to the special order of the purchaser and 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 to any other person at no cost to that person who becomes the owner thereof."

Enclosed is a copy of Sales and Use Tax Regulation 1541. 5, Printed Sales Messages, for your further information. Under the exemption provided by section 6379.5, tax would not apply

to Corporation X's sales of advertising inserts which Corporation X printed to the special order of the purchaser and mailed or delivered to purchasers of Corporation X's publications. The Board's legal staff has taken the position that, when a person purchases a publication, advertising material that is provided as part of the publication is provided at no cost to the purchaser of the publication for purposes of section 6379.5.

Also, tax does not apply to Corporation X's sales of advertising inserts to persons who purchase the inserts to become a component part of a publication described in issue 1-C, if the publication qualifies as a "periodical" which Corporation X sells. (See Sales and Use Tax Regulation 1590, subdivision (b)(1).)

- "4-A. Sales of publications described in issue #1-A on diskettes.
- "4-B. Sales of publications described in issue #1-B on diskettes.
- "4-C. Sales of publications described in issue #1-C on diskettes.
- "4-D. Sales of publications described in issue #1-D on diskettes.
- "5-A. Sales of publications described in issue #1-A on CD-ROM.
- "5-B. Sales of publications described in issue #1-B on CD-ROM.
- "5-C. Sales of publications described in issue #1-C on CD-ROM.
- "5-D. Sales of publications described in issue #1-D on CD-ROM."

The application of tax to Corporation X's charges for publications is the same whether the publications are issued on paper, diskettes, or CD-ROM.

- "6-A. Licensing to others the right to reprint information contained in publications described in issue #1-A.
- "6-B. Licensing to others the right to reprint information contained in publications described in issue #1-B.
- "6-C. Licensing to others the right to reprint information contained in publications described in issue #1-C.
- "6-D. Licensing to others the right to reprint information contained in publications described in issue #1-D."

Tax does not apply to Corporation X's charges to a person solely to provide that person with the right to reprint information contained in Corporation X's publications.

- "7. Sales of mailing lists consisting of the names of the members of Corporation 'X' on diskettes."

Enclosed is a copy of Sales and Use Tax Regulation 1504, Mailing Lists and Services. Generally, Corporation X's sales of mailing lists are subject to sales tax. Tax does not apply to Corporation X's charge for the transfer of a mailing list when its contract restricts the transferee or user to use the mailing list one time only. Operative January 1, 1994, a mailing list embodied on a diskette qualifies for that tax treatment. (Reg. 1504, subd. (a).)

- "8. Sales of video cassettes containing training sessions intended for members of a professional services industry.
- "9. Sales of audio cassettes containing training sessions intended for members of a professional services industry."

Tax applies to Corporation X's sales of videocassettes or audiocassettes of training sessions.

- "10. Seminar fees of attendees of training sessions intended for members of a professional services industry. Publications and/or handout materials are distributed at the seminars, but no charge is separately stated for the publications and/or handout materials.
- "11. Materials sent as preliminary reading to participants of seminars described in issue #10. The materials are in booklet format or are xeroxed copies. There is no separately stated charge for the materials on the seminar invoice.
- "12. Handouts to attendees at seminars described in issue #10. The handouts are xeroxed copies. There is no separately stated charge for the handouts on the seminar invoice.
- "13. Publications distributed to attendees at seminars described in issue #10. The publications are those described in issue # 1-D. There is no separately stated charge for the publications on the seminar invoice."

Assuming Corporation X provides significant educational services, including classroom-type instruction at the seminars, tax does not apply to Corporation X's transfer of the publications and handouts provided to the attendees for no additional charge. Rather, Corporation X is the consumer of, and tax applies to the sale to Corporation X of the publications and materials provided to the attendees. (Cf Bus. Tax. Law Guide Annot. 515.0015.)

- "14. Fees paid to Corporation 'X' for membership with Corporation 'X'."

Assuming the charge by Corporation X for membership is to provide members with membership services rather than tangible personal property, tax does not apply to the charge for membership.

- "15. Fees paid to Corporation 'X' for membership with Corporation 'X'. Members will receive subscriptions to publications described in issues #1-A and 1-C at discounted prices. There is no separately stated charge for the subscriptions."

Tax applies to Corporation X's charge to members for tangible personal property. Accordingly, tax applies to that portion of the membership charge attributable to the sale of publications unless otherwise exempt. For example, depending upon further facts, if the publications described in 1-C are periodicals, Corporation X's sale of the periodicals to the members may be exempt from tax pursuant to Revenue and Taxation Code sections 6362.7 or 6362.8, discussed above.

- "16. Fees for information provided from the library of Corporation 'X'. Typically, a customer will request information from Corporation 'X' such as magazine articles or data relating to a professional services industry. Corporation 'X' will perform research and/or compile information as necessary, and forward the product to the customer in written form (either by delivering copies directly or by facsimile transmission)."

If Corporation X transfers the information to the customers solely by facsimile transmission and does not transfer any tangible personal property, tax does not apply to the charge. Tax does not apply to Corporation X's charge to the customer for providing photocopies of information which Corporation X retrieves from Corporation X's library pursuant to the special order of the customer. We consider Corporation X performs a nontaxable service and is the consumer of photocopies it provides to the customer. On the other hand, if Corporation X merely has standardized reports of data maintained by Corporation X and furnishes a copy of a report for the charge, Corporation X thereby sells tangible personal property rather than performs a service for the customer. \

- "17. Fees for job advertisements published on Corporation 'X' On-Line, an on-line service provided for members of Corporation 'X'. Typically, a member of Corporation 'X' will place an advertisement for on-line circulation to other members of Corporation 'X'."

We assume Corporation X does not provide tangible personal property such as an advertisement layout to the member. In that case, tax does not apply to Corporation X's charge for the on-line advertisement.

Enclosed is a copy of this Board's Pamphlet No. 71, California City and County Sales and Use Tax Rates: You may keep the information in the pamphlet updated by periodically checking the Board's internet home page (<http://www.boe.ca.gov>).

As you requested, we have also enclosed the forms and instructions for a person to apply for a seller's permit. The forms also suffice for an out-of-state vendor to register to collect California use tax.

If you need further information, feel free to contact this office directly.

Very truly yours,

Timothy W. Boyer  
Chief Counsel