

**STATE BOARD OF EQUALIZATION**

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May 20, 1997

Mr. W--- L---
Senior Accountant
F--- M--- Company
XXX --- Drive
--- ---, --- XXXXX

Account No. SC --- XX-XXXXXX

Dear Mr. L---:

This is in reply to your January 21, 1997 letter regarding the application of California sales and use tax to sales of newsletters by F--- M--- Company.

You note F--- M--- Company is a newsletter publisher. You sign a contract with your customers on a yearly basis to produce newsletters for the customers. We understand some of your contracts are for as many as 12 issues and some as few as two, but the average contract is for four issues. The newsletters contain information of general interest to the public or specific organization depending on the client. All of the issues bear a relationship to each other. The design and layout of the newsletter usually remains the same from issue to issue.

We assume that you sell newsletters to customers who distribute the newsletters without charge to the readers. Revenue and Taxation Code section 6362.7 provides an exemption from sales and use tax for the sale and use of tangible personal property which becomes an ingredient or component part of any periodical that is distributed without charge and regularly issued at average intervals not exceeding three months, and any such periodical. Subdivision (c) of section 6362.7 defines periodical:

“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.”

Enclosed is a copy of Sales and Use Tax Regulation 1590, Newspapers and Periodicals, for your further information. Based on the information you provided, if the newsletters you publish and sell qualify as periodicals as defined above, your sale of the newsletters which are issued at least four times each year, but not more than 60 times each year, are exempt from sales and use tax. Your sales of the newsletters that are issued two times a year are not exempt from tax. If you wish our opinion as to whether a newsletter qualifies as a periodical, please send copies of three consecutive issues for our review. Please also explain the manner of distribution and whether or not your client makes a charge to the distributees for the newsletters.

You also note you use mailing lists to print mailing labels for your clients. The client provides the list to you, or you purchase the lists for the client to print the mailing labels for the client's newsletters. If the client supplies the mailing list, it supplies a new list for every issue which you use only for that issue, or the client supplies a list for the entire term of the contract. When you purchase the list, it is usually only for the term of the contract. Enclosed is a copy of Regulation 1504, Mailing Lists and Services. As provided in subdivision (a)(2) of the regulation, sales or use tax generally applies to the sale or use of mailing lists.

Tax does not apply to charges for the transfer of a mailing list where the contract restricts the transferee to use the mailing list for only one time. Based on the facts you provided, it does not appear that the contract to transfer a mailing list to you restricts your use of the mailing list one time only. Under the circumstances, it appears sales tax properly applies to the sale of a mailing list to you in California or use tax applies to your use of a mailing for use in this state. In order for us to give you a more definitive answer, we will need a description of the transfer of a mailing list to you for your use.

If you have any further questions, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

Enc.

cc: -- District Administrator