



STATE OF CALIFORNIA

## STATE BOARD OF EQUALIZATION

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*Executive Director*

May 31, 1991

Re: "Out of the Blue"  
(No permit number)

Dear

This is in response to your letter of November '30, 1990, in which you inquired as to whether your production, "Out of the Blue", would qualify under the sales and use tax exemption for newspapers and periodicals.

### Facts

You describe your production as follows:

--- produces a quarterly video magazine for sport aviation called "Out of the Blue". Each issue contains a similar format which includes aircraft and product reviews, a famous aviation columnist, airport profiles and about five minutes of advertising. The entire video is approximately 80 to 85 minutes in length.

The video magazine is sent out every three months to paid subscribers. The only differences between "Out of the Blue" and a 'regular' magazine is that "Out of the Blue" is on video not paper and it is issued quarterly, not monthly.

### Sales and Use Tax - General Discussion

Except to the extent specifically excluded or exempted by statute, the California Revenue and Taxation Code imposes an excise tax in connection with the retail sale of all tangible personal property sold or purchased for use in this state. (All statutory citations are to the California Revenue and Taxation Code, unless otherwise noted herein.) Section 6051 imposes

sales tax on the gross receipts from the retail sale of all tangible personal property sold in this state. The sales tax is imposed upon the retailer. California Civil Code Section 1656.1 allows the retailer to collect sales tax reimbursement from the consumer.

### Opinion

The Board of Equalization has consistently taken the position that video magazines fall outside the periodicals exemption contained in Section 6362(a), and are therefore, taxable under the California Sales and Use Tax Law. This position is based upon the fact that the legislature has elected to treat videos as a separate and distinct form of tangible personal property, the sale of which is generally taxable. For example, Section 6006(g)(7) (effective 9-1-83) treats the rental or lease of a video tape for private use where the viewer does not obtain the right to license, broadcast, exhibit or reproduce the video tape as a taxable sale. There was no contemplation at the time this provision was enacted, that any rentals of video tapes would be exempt. In light of this, since at least 1986, it has been our position that outright sales of video tapes are taxable as well. Although in many respects, it may appear as though your production satisfies the requirements of an exempt periodical, it is still a video and it is its characterization as a video which is determinative. For these reasons, it is our opinion that a video magazine cannot be considered an exempt periodical regardless of whether or not in all other respects it appears to meet the requirements of the exemption.

Our records do not indicate that you have a seller's permit. You will need to contact your local district office in order to obtain one. The address and telephone number of the San Francisco office is:

State Board of Equalization  
50 Fremont Street, Suite 1400,  
San Francisco, CA 94105-2234,  
Telephone: (415) 396-9800

If you have any further questions, please do not hesitate to write to us again.

Cordially,

Victoria Lani Arena  
Tax Counsel

VLA: