STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6450

January 7, 1993

Ms. L--- G---
A--- and C---
The S--- F-- Foundation
XXX --- Street, Suite XXX
--- ---, CA XXXXX

Dear Ms. G---:

This is in reply to your November 3, 1992 letter regarding the application of sales tax to charges to The S--- F--- Foundation for the printing of its annual report and newsletter. Based on the information in your letter and our telephone discussion, we understand the following facts:

> S—F--- Foundation is an organization which qualifies for tax-exempt status under Internal Revenue Code section 501(c)(3). The Foundation publishes the Annual Report once a year and the newsletter twice a year. Your letter notes that the publications serve both as a public record of the work of the Foundation and as 'sales' pieces to encourage prospective donors and prospective grantees to take advantage of the services provided by the Foundation.
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> Your mailing lists for the publications consists of:
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> 1) current donors,
> 2) donor prospects,
> 3) foundation friends, e.g., past trustees and past staff,
> 4) professional advisors, such as attorneys, accountants, and bank trust officers,
> 5) current and prospective grantees and,
> 6) selected members of the general public, including public officials and press media.

Given this information, you asked for the application of sales tax to the sale of the publications to the Foundation.

We first note that we do not believe that the sale of the publications qualifies for exemption under Revenue and Taxation Code section 6379.5 as a sale of printed sales messages. As provided at subdivision (a)(1) of Sales and Use Tax Regulation 1541.5, Printed Sales Messages, the term "printed sales messages" does not include fund-raising materials, However, as we discussed during our December 17 telephone conversation, effective November 1, 1992, Revenue and Taxation Code section 6362.7 provides in relevant part as follows:

> "(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....
>
> "(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."

Effective November 1, 1992, Revenue and Taxation Code section 6362.8 provides in relevant part:

> "(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:
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> "(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...."

Given that under both statutes the exemption is limited to the sale of newspapers and periodicals which are "regularly issued at average intervals not exceeding three months" sales of the Annual Report and newsletter to the Foundation do not qualify for the exemptions for sales of newspapers or periodicals. The Foundation does not issue the publications with the required frequency.

On the other hand, between the dates November 1, 1991 and October 31, 1992, section 6362.8 provided in relevant part:

"(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, or any such newspaper or periodical.

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

"(1) Any newspaper or periodical published or purchased by an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, and to which any of the following apply:

"(A) Distribution is to the members of the organization in consideration of payment of the organization's membership fee, or to the organization's contributors.

"(B) The publication does receive revenue from, or accept, any commercial advertising...."

In short, prior to November 1, 1992 there was no requirement that the organization issue the newspaper or periodical at average intervals not exceeding three months. Therefore, we believe that, based on the facts you provided, the sale of printing of the newsletter and the Annual Report to the Foundation between November 1, 1991 and October 31, 1992 was exempt from tax.

The Foundation may request the retailer to claim a refund of the sales tax paid for that period. The Board would pay the refund to the retailer on condition that the retailer, in turn, refund the tax reimbursement to the Foundation.

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

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr