



STATE BOARD OF EQUALIZATION

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January 15, 2016

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for proposed amendments to Regulation 1590, *Newspapers and Periodicals*, which will be presented at the Board's January 26, 2016 Business Taxes Committee meeting. The proposed amendments clarify the application of tax to subscriptions of newspapers that include or combine access to digital content.

Please feel free to publish this information on your website or otherwise distribute it to your associates, members, or other persons that may be interested in this issue.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **10:00 a.m.** on **January 26, 2016** in Room 121 at the address shown above.

Sincerely,

Susanne Buehler, Chief
Tax Policy Division
Sale and Use Tax Department

SB:tmc

Enclosures

cc: (all with enclosures, via email and/or hardcopy as requested)
Honorable Jerome E. Horton, Chairman, Third District
Senator George Runner (Ret.), Vice Chair, First District
Honorable Fiona Ma, CPA, Member, Second District
Honorable Diane L. Harkey, Member, Fourth District
Honorable Betty T. Yee, State Controller, c/o Ms. Yvette Stowers (MIC 73)
Ms. Kari Hammond, Board Member's Office, Third District

Ms. Shellie Hughes, Board Member's Office, Third District
Ms. Camille Dixon, Board Member's Office, Third District
Mr. Sean Wallentine, Board Member's Office, First District
Mr. Lee Williams, Board Member's Office, First District
Mr. Brian Wiggins, Board Member's Office, First District
Mr. Cary Huxsoll, Board Member's Office, First District
Mr. Alfred Buck, Board Member's Office, First District
Mr. Jim Kuhl, Board Member's Office, Second District
Ms. Kathryn Asprey, Board Member's Office, Second District
Mr. John Vigna, Board Member's Office, Second District
Mr. Tim Morland, Board Member's Office, Second District
Ms. Lizette Mata, Board Member's Office, Second District
Mr. Russell Lowery, Board Member's Office, Fourth District
Mr. Ted Matthies, Board Member's Office, Fourth District
Ms. Lisa Renati, Board Member's Office, Fourth District
Mr. Clifford Oakes, Board Member's Office, Fourth District
Mr. Ramon Salazar, State Controller's Office (MIC 73)
Ms. Cynthia Bridges (MIC 73)
Mr. Randy Ferris (MIC 83)
Mr. David Gau (MIC 101)
Ms. Lynn Bartolo (MIC 43 or 57)
Mr. Todd Gilman (MIC 70)
Mr. Wayne Mashihara (MIC 47)
Mr. Kevin Hanks (MIC 49)
Mr. Mark Durham (MIC 67)
Mr. Robert Tucker (MIC 82)
Mr. Jeff Vest (MIC 85)
Mr. Jeff Angeja (MIC 85)
Mr. David Levine (MIC 85)
Mr. Bradley Heller (MIC 82)
Mr. Lawrence Mendel (MIC 82)
Mr. John Thiella (MIC 73)
Mr. Scott Claremon (MIC 82)
Ms. Kirsten Stark (MIC 50)
Mr. Marc Alviso (MIC 101)
Mr. Chris Lee (MIC 101)
Ms. Laureen Simpson (MIC 70)
Ms. Karina Magana (MIC 47)
Mr. Bradley Miller (MIC 92)
Mr. Bill Benson (MIC 67)
Mr. Robert Wilke (MIC 50)
Ms. Tracy McCrite (MIC 50)

Agenda – January 26, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1590, *Newspapers and Periodicals*

<p>Action 1 – Agreed Upon Items</p> <p>Agenda, pages 2-8.</p>	<p>Alternative 1</p> <p>Approve and authorize publication of proposed amendments to Regulation 1590 as agreed upon by the California Newspaper Publishers Association (CNPA) and staff.</p> <p style="text-align: center;">OR</p> <p>Alternative 2</p> <p>Do not approve proposed amendments to Regulations 1590.</p>
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**Agenda – January 26, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1590, *Newspapers and Periodicals***

Action Item	Staff and Industry's Proposed Regulatory Language
<p>Action 1 – Agreed Upon Items</p>	<p><i>(Only the proposed amendments are provided. Staff has omitted other subdivisions or sections of the regulations that are not being amended.)</i></p> <p>Regulation 1590, <i>Newspapers and Periodicals</i></p> <p>Reference: Sections 6005, 6006, 6007, 6010, 6015, 6361.5, 6362.3, 6362.7, and 6362.8, Revenue and Taxation Code</p> <p>(a) Definitions.</p> <p><u>(8) "Mixed Newspaper Subscription." "Mixed newspaper subscription" means and includes a subscription for a tangible newspaper combined with a subscription for the right to access digital content.</u></p> <p><u>(9) "Digital-Only Subscription Rate." "Digital-only subscription rate" means the price a customer would pay to access digital content from a newspaper publisher, exclusive of any promotions or discounts, without any print delivery.</u></p> <p><u>(10) "Print-Only Subscription Rate." "Print-only subscription rate" means the price a customer would pay to have the print edition of a newspaper delivered to their home, exclusive of any promotions or discounts, without any access to digital content.</u></p> <p>(b) Application of Tax.</p> <p>(1) In General. Effective July 15, 1991, tThe sale of newspapers and periodicals, including sales by third party retailers, is subject to tax unless otherwise exempt.</p> <p>(2) Distributions of Newspapers and Periodicals Without Charge. Effective October 2, 1991, tTax does not apply to the sale or use of tangible personal property which becomes an ingredient or component part of a copy of a newspaper or periodical regularly issued at average intervals not exceeding three months when that copy of such newspaper or periodical is distributed without charge, nor does tax apply to such distribution.</p>

**Agenda – January 26, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1590, *Newspapers and Periodicals***

Action Item	Staff and Industry's Proposed Regulatory Language
	<p>(3) Subscriptions. The sale or use of newspapers and periodicals is exempt from tax during the term of a prepaid subscription if the purchaser ordered and paid for the subscription prior to July 15, 1991.</p> <p>Effective November 1, 1992, t</p> <p><u>(A) Exempt Subscriptions.</u> Tax does not apply to the sale or use of a periodical, including a newspaper, which appears at least four, but not more than 60 times each year, which is sold by subscription, and which is delivered by mail or common carrier. For example, a daily newspaper is not a periodical for the purposes of this subdivision (b)(3). Tax does not apply to the sale or use of tangible personal property which becomes an ingredient or component part of such a periodical.</p> <p>Sales tax reimbursement collected on the sale of a periodical subscription prior to the November 1, 1992 effective date of the exemption for the sale of issues delivered on or after November 1, 1992 constitutes excess tax reimbursement. The retailer must refund the tax reimbursement to the customer or pay it to the state in accordance with subdivision (b) of Regulation 1700 (18 CCR 1700).</p> <p><u>(B) Mixed Newspaper Subscriptions.</u> <u>In the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax.</u></p> <ol style="list-style-type: none"> <u>1. For sales of mixed newspaper subscriptions made on and after October 1, 2016, forty-seven (47) percent of the charge for the mixed newspaper subscription is presumed to be the taxable measure from the sale of tangible personal property and tax applies to that amount; the remaining fifty-three (53) percent is presumed to be the nontaxable sale of the right to access the digital content.</u> <u>2. This presumption may be overcome by evidence demonstrating to the satisfaction of the board that the digital-only subscription rate divided by the sum of the print-only subscription rate and the digital-only subscription rate is greater than fifty-three (53) percent. Taxpayers shall maintain records to substantiate a nontaxable allocation greater than fifty-three (53) percent. Rates shall not be computed more often than once per quarter.</u>

**Agenda – January 26, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1590, *Newspapers and Periodicals***

Action Item	Staff and Industry's Proposed Regulatory Language
	<p><u>(C) Reporting Subscription Sales.</u> Each delivery of a newspaper or periodical pursuant to a subscription sale is a separate sale transaction. When the sale is subject to tax, the retailer must report and pay the tax based upon the reporting period within which the delivery is made. The subscription price shall be prorated over the term of the subscription period.</p> <p>(5) Nonprofit Organizations.</p> <p>(A) Internal Revenue Code Section 501(c)(3) Organizations. Effective November 1, 1991, until October 31, 1992, †Tax does not apply to the sale or use of any newspaper or periodical distributed by an organization that qualifies for tax exempt status under section 501(c)(3) of the Internal Revenue Code, nor tangible personal property which becomes an ingredient or component part of any such newspaper or periodical; <u>regularly issued at average intervals not exceeding three months</u>only as to issues <u>and</u> distributed under either of the following circumstances:</p> <p>Effective November 1, 1992, the exemption is applicable only as to a newspaper or periodical regularly issued at average intervals not exceeding three months.</p> <p>(B) Other Nonprofit Organizations. Effective November 1, 1991, †Tax does not apply to the sale or use of any newspaper or periodical <u>regularly issued at average intervals not exceeding three months and</u> distributed by a nonprofit organization, nor tangible personal property that becomes an ingredient or component part of or any such newspaper or periodical, only as to issues distributed pursuant to both of the following requirements:</p> <p>(8) Fixed Price Contracts. The sale or use of newspapers and periodicals is exempt from tax during the term of a prepaid subscription if the purchaser ordered and paid for the subscription prior to July 15, 1991.</p> <p>(98) School Catalogs and Yearbooks. Public or private schools, county offices of education, school districts, or student organizations are the consumers of catalogs and yearbooks prepared for or by them, and tax does not apply to their receipts from the distribution of the publications to students.</p>

**Agenda – January 26, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1590, *Newspapers and Periodicals***

Action Item	Staff and Industry's Proposed Regulatory Language
	<p>(c) Exemption Certificates.</p> <p align="center">Certificate A</p> <p align="center">California Sales Tax Exemption Certificate</p> <p align="center">Sales of tangible personal property for incorporation into a newspaper or periodical for sale</p> <hr/> <p align="center">(Name of Purchaser)</p> <hr/> <p align="center">(Address of Purchaser)</p> <p>I HEREBY CERTIFY:</p> <p><i>Initial one of the following:</i></p> <p>____ That I hold valid seller's permit No. _____ issued pursuant to the Sales and Use Tax Law.</p> <p>____ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do not sell any tangible personal property for which a permit is required.</p> <p>I further certify that the tangible personal property described herein which I shall purchase from</p> <hr/> <p align="center">(Name of Vendor)</p> <p>will become a component part of the newspaper or periodical *</p> <hr/> <p>and sold as a component part of the publication.</p>

**Agenda – January 26, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1590, *Newspapers and Periodicals***

Action Item	Staff and Industry's Proposed Regulatory Language
	<p>I understand that in the event any such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:</p> <p>_____</p> <p>_____</p> <p>Date: _____, 19 _____</p> <p>_____</p> <p align="center">(Signature of Purchaser or Authorized Agent)</p> <p>_____</p> <p align="center">(Title)</p> <p>* Insert name and type of newspaper or periodical</p> <p align="center">Certificate B</p> <p align="center">California Sales Tax Exemption Certificate</p> <p align="center">Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed without charge</p> <p>_____</p> <p align="center">(Name of Purchaser)</p> <p>_____</p> <p align="center">(Address of Purchaser)</p> <p>I HEREBY CERTIFY:</p>

**Agenda – January 26, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1590, *Newspapers and Periodicals***

Action Item	Staff and Industry's Proposed Regulatory Language
	<p><i>Initial one of the following:</i></p> <p>____ That I hold valid seller's permit No. _____ issued pursuant to the Sales and Use Tax Law.</p> <p>____ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do not sell any tangible personal property for which a permit is required.</p> <p>I further certify that I am engaged in the business of publishing *</p> <p>_____</p> <p>which is regularly issued at average intervals not exceeding three months and distributed without charge by me. The tangible personal property described herein which I shall purchase from</p> <p>_____</p> <p align="center">(Name of Vendor)</p> <p>will become a component part of the publication listed above. I understand that if I use any of the property purchased for any other purpose I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of the such property. Description of property to be purchased:</p> <p>_____</p> <p>_____</p> <p>Date: _____, 19 _____</p> <p>_____</p> <p align="center">(Signature of Purchaser or Authorized Agent)</p> <p>_____</p> <p align="center">(Title)</p> <p align="center">* Insert name and type of newspaper or periodical</p>

**Agenda – January 26, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1590, *Newspapers and Periodicals***

Action Item	Staff and Industry's Proposed Regulatory Language
	<p align="center">Certificate C</p> <p align="center">California Sales Tax Exemption Certificate</p> <p align="center">Sales of tangible personal property that becomes an ingredient or component of newspapers or periodicals that are distributed by organizations which qualify for tax-exempt status under Internal Revenue Code section 501(c)(3)</p> <hr/> <p align="center">(Name of Purchaser)</p> <hr/> <p align="center">(Address of Purchaser)</p> <p>I HEREBY CERTIFY:</p> <p><i>Initial one of the following:</i></p> <p>____ That I hold valid seller's permit No. _____ issued pursuant to the Sales and Use Tax Law.</p> <p>____ That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.</p> <p>I further certify that the purchaser is an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is engaged in the business of selling or publishing *</p> <hr/> <p>which is regularly issued at average intervals not exceeding three months.</p> <p>The tangible personal property described herein which I shall purchase from</p> <hr/> <p align="center">(Name of Vendor)</p> <p>will be sold in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and (check one or both):</p>

**Agenda – January 26, 2015 Business Taxes Committee Meeting
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Action Item	Staff and Industry's Proposed Regulatory Language
	<p>____ The organization will distribute the newspaper or periodical to the members of the organization in consideration of payment of the organization's membership fee or to the organization's contributors,</p> <p>____ The publication does not receive revenue from or accept any commercial advertising.</p> <p>I understand that in the event any such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:</p> <p>_____</p> <p>_____</p> <p>Date: _____, <u>19</u> _____</p> <p>_____</p> <p align="center">(Signature of Purchaser or Authorized Agent)</p> <p>_____</p> <p align="center">(Title)</p> <p>* Insert name and type of newspaper or periodical</p> <p align="center">Certificate D</p> <p align="center">California Sales Tax Exemption Certificate</p> <p align="center">Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed by nonprofit organizations</p> <p>_____</p> <p align="center">(Name of Purchaser)</p>

**Agenda – January 26, 2015 Business Taxes Committee Meeting
Proposed Amendments to Regulation 1590, *Newspapers and Periodicals***

Action Item	Staff and Industry's Proposed Regulatory Language
	<p align="center">_____ (Address of Purchaser)</p> <p>I HEREBY CERTIFY:</p> <p><i>Initial one of the following:</i></p> <p>____ That the purchaser holds valid seller's permit No. _____ issued pursuant to the Sales and Use Tax Law.</p> <p>____ That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.</p> <p>I further certify that the purchaser is a nonprofit organization which is engaged in <u>the</u> business of selling or publishing *</p> <p>_____</p> <p><u>which is regularly issued at average intervals not exceeding three months.</u></p> <p>The tangible personal property described herein which I shall purchase from</p> <p>_____</p> <p align="center">(Name of Vendor)</p> <p>will be resold by the organization in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and both of the following apply:</p> <p>(A) Distribution will be to any member of the nonprofit organization in consideration, in whole or in part, of payment of the organization's membership fee.</p> <p>(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.</p> <p>I understand that in the event any of such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by</p>

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Proposed Amendments to Regulation 1590, *Newspapers and Periodicals*

Action Item	Staff and Industry's Proposed Regulatory Language
	<p>the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of property to be purchased:</p> <p>_____</p> <p>_____</p> <p>Date: _____, <u>19</u> _____</p> <p>_____</p> <p align="center">(Signature of Purchaser or Authorized Agent)</p> <p>_____</p> <p align="center">(Title)</p> <p>* Insert name and type of newspaper or periodical</p>

Issue Paper Number 15-012



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

Regulation 1590, *Newspapers and Periodicals*

I. Issue

Whether the Board should amend Regulation 1590, *Newspapers and Periodicals*, to clarify the application of tax to subscriptions of newspapers that include or combine access to digital content.

II. Alternative 1 - Staff Recommendation

Staff recommends the Board approve and authorize publication of the proposed amendments to Regulation 1590, as set forth in Exhibit 2. The proposed amendments clarify the application of tax to mixed newspaper subscriptions by establishing that, beginning October 1, 2016, fifty-three (53) percent of the charge is presumed to be for the nontaxable sale of the right to access digital content (nontaxable allocation). Taxpayers may rebut the presumption by producing documentation establishing that the nontaxable allocation is greater than fifty-three (53) percent. Staff's amendments are supported by the California Newspaper Publishers Association (CNPA).

III. Other Alternative(s) Considered

Do not approve the proposed amendments to Regulation 1590.

IV. Background

General

California imposes a sales tax measured by a retailer's gross receipts from the retail sale of tangible personal property inside this state, unless the sale is specifically exempt from taxation by statute. While the sales tax is imposed upon the retailer for the privilege of selling tangible personal property at retail in California, the retailer may collect tax reimbursement from the customer if the contract of sale so provides. When sales tax does not apply, use tax is imposed upon the consumer, measured by the sales price of property purchased from a retailer for the storage, use, or other consumption of the property in California, unless specifically exempted or excluded from taxation by statute.

A sale includes any transfer of title or possession, in any manner or by any means whatsoever, of tangible personal property for a consideration. In general, gross receipts and sales price mean the total amount of the sale, including, among other things, any services that are a part of the sale. Tangible personal property is personal property that may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses. It is presumed that all gross receipts are subject to the tax until the contrary is established, and the burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he or she accepts a resale certificate from the purchaser.

While tax is imposed on transactions involving tangible personal property, neither sales tax nor use tax is imposed on charges entirely for the provision of services. Further, charges primarily for the provision of services that include the incidental transfer of tangible personal property are not subject to tax if the true object of the transaction is to obtain the provision of services. On the other hand, in transactions where services are inextricably intertwined as a part of the sale of tangible personal property, the entire charge is subject to tax because the true object of the transaction is to obtain the tangible personal property. For example, the true object in purchasing a sculpture is acquisition of the finished product, and thus the transaction is taxable without reduction for charges for any service (such as labor) required to make the product.

A "mixed transaction," in contrast, is a transaction in which the goods and services are distinct and each is a significant object of the transaction. If a transaction is a "mixed transaction," each element of the transaction is analyzed as a separate transaction, and tax is applied to the tangible personal property portion and the service portion is not taxed. In determining the relative values of the two portions, the Board has required that a "reasonable" and "fair" allocation of the value of the taxable and nontaxable portions be made.

Regulation 1590

Regulation 1590 provides guidance with respect to the application of tax to newspapers and periodicals¹, including those sold under a subscription. A newspaper is a publication that is printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of general interest. A periodical is a term used to describe those publications that appear at stated intervals, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. In addition, each issue must bear a relationship to prior or subsequent issues in respect to continuity of literary character or similarity of subject matter, and there

¹ Staff recognizes that subscriptions for tangible periodicals may also include the right to access digital content. However, staff does not believe clarifying amendments are warranted regarding the allocation between taxable and nontaxable amounts for periodicals. This is because most periodicals are exempt from tax in their entirety pursuant to Regulation 1590, subdivision (b)(3) because they appear at least four times, but not more than 60 times each year.

must be some connection between the different issues of the series in the nature of the articles appearing in them. Furthermore, each issue must be sufficiently similar in style and format to make it evident that it is one of a series. Since July 15, 1991, the sales of newspapers and periodicals have been subject to tax, unless otherwise exempt.

Subscriptions

Regulation 1590, subdivision (b)(3) explains that effective November 1, 1992, tax does not apply to the sale or use of a periodical, including a newspaper, which appears at least four, but not more than 60 times each year, which is sold by subscription, and which is delivered by mail or common carrier. Subdivision (b) further provides that each delivery of a newspaper or periodical pursuant to a subscription sale is a separate sales transaction. When the sale is subject to tax, the retailer must report and pay the tax based upon the reporting period within which the delivery is made. The subscription price shall be prorated over the term of the subscription period.

V. Discussion

For purposes of this discussion, the term "printed newspapers" is used to describe those newspapers that appear more than 60 times a year and are, therefore, not exempt from tax under Regulation 1590, subdivision (b)(3). Historically, newspaper publishers have provided printed newspapers, which were physically distributed to their customers. However, as technology and reader preferences have evolved, newspaper publishers are now offering other types of products, including access to digital online editions of the newspapers. Often, the access to the digital online content includes material that is not otherwise provided with a printed publication alone, such as: expanded articles, additional photographs, and mobile applications. The digital content may be offered as a stand-alone product or combined with a subscription for printed newspaper delivery. Furthermore, the subscription packages may vary in the content and frequency of delivery (for example, daily print and daily access to digital content, weekend print and daily access to digital content, or daily access to digital content only).

Mixed Newspaper Subscriptions

Digital content offered as a stand-alone product through remote telecommunications in which no tangible personal property is transferred to the customer is not subject to tax. However, when both printed newspapers and access to digital content is provided for a single price, the print and digital content are each a significant object of the transaction and have a significant value to the customer. Accordingly, the amount paid by the customer for the mixed subscription should be allocated between the value of the taxable and nontaxable portions in a fair and reasonable manner. Staff recognizes that in a mixed subscription, the relative value of each part of the transaction tends to vary from customer to customer and may also vary over time as subscriptions are renewed or new offers or promotions are made available. The price of a customer's subscription package can be based on several factors, including but not limited to, the length of the contract, the frequency of paper delivery, the distance of delivery of the newspaper, the negotiated pricing by the customer or the newspaper, etc. The pricing can vary from customer to customer and may also vary over time for the same customer. This variance makes it difficult to allocate the subscription cost between taxable and nontaxable amounts in a fair, reasonable, and consistent manner. In addition there appears to be little consistency in how the industry prices mixed newspaper subscriptions.

Interested Parties Comments

In the Initial Discussion Paper, staff proposed a thirty-eight (38) percent nontaxable allocation with the remaining sixty-two (62) percent as the taxable allocation of a mixed newspaper subscription. Interested parties were supportive of a specified percentage but also wanted to add a rebuttable presumption. Staff requested input from interested parties on other alternatives to this allocation with backup data to support

alternate suggestions and examples of documentation they would provide for the rebuttable presumption such that a seller could apply alternate percentages if supported by unique facts and circumstances.

In the Second Discussion Paper, staff introduced a proposal to use two different percentages for mixed newspaper subscriptions: one for subscriptions with print copies distributed four days or more per week and one for subscriptions with print copies distributed three days or less per week. Staff met with interested parties on September 29, 2015, to discuss these proposed amendments. During the meeting, interested parties stated they were not in support of two percentages. Following the interested parties meeting, staff received comments from Mr. James Ewert on behalf of the CNPA, in a letter dated November 3, 2015 (Exhibits 3 & 4). CNPA explained that two rates would be considerably burdensome and complicated for the newspapers to calculate with little, if any, benefit to the newspapers or the Board of Equalization (BOE) and that they do not support this approach.

CNPA also asserted that staff's proposed percentage for determining the nontaxable portion of a mixed newspaper subscription does not accurately reflect rapidly changing developments in the industry. CNPA presented a list of twenty-seven (27) newspapers they surveyed demonstrating a nontaxable allocation range from forty-four (44) percent to sixty-three (63) percent and an overall average of fifty-three (53) percent. CNPA provided staff with a copy of their data and calculations. To compute the allocation percentage, CNPA divided the digital-only subscription rate by the sum of the print-only subscription rate and the digital-only subscription rate for various subscription frequencies. They then averaged these percentages together for each newspaper publisher and then averaged all twenty-seven (27) newspapers together. CNPA claims that many newspapers are decreasing the frequency of their print products and relying more on digital content. For these reasons, CNPA proposes that "sixty (60) percent is a more accurate percentage for purposes of establishing a rebuttable presumption that reflects the nontaxable portion of a Mixed Newspaper Subscription."

When reviewing the data provided by CNPA, staff noted that the calculated percentage was not weighted by the number of subscribers. Staff believes a weighted average computation is a fair and reasonable allocation method because it takes into account the size of the newspaper publishers, so as not to give disproportionate weight to smaller publishers that tend to have higher digital percentages. Staff used the average allocation percentages provided by CNPA and obtained the number of subscribers² for each newspaper to calculate a weighted average percentage for the nontaxable allocation. CNPA is in agreement with this nontaxable allocation.

Staff's findings result in an average of approximately fifty (50) percent for the nontaxable allocation. The newspapers surveyed are the more commonly known newspapers and likely represent a majority of the readership in the state but these newspapers do not represent the majority of all newspapers offered. With staff's current data at fifty (50) percent, and evidence that the percentage is trending upwards, staff believes that by the time the regulation is approved, fifty-three (53) percent is reflective of where the industry average will be.

Rebuttable Presumption

Staff understands that there is great variance within the newspaper industry with respect to pricing models and product offerings. Staff's objective is to establish a percentage that accurately reflects a fair and reasonable means to allocate between the taxable and nontaxable values of a mixed newspaper subscription for the industry as a whole. A specified percentage would be administered more efficiently, allowing for greater clarity for newspaper publishers and their customers. However, staff recognizes that some newspaper publishers will have higher nontaxable percentages based on their actual subscription

² Subscriber number data obtained from the Gale Directory of Publications and Broadcast Media (151st edition).

prices. Accordingly, staff proposes adding a rebuttable presumption so that newspaper publishers may document a higher nontaxable allocation percentage based on specific facts for their business.

If the taxpayer chooses, they may overcome the presumption established in subdivision (b)(3)(B)1, by providing evidence demonstrating to the satisfaction of the BOE that the price of the digital-only subscription rate divided by the sum of the digital-only subscription rate and the print-only subscription rate is greater than fifty-three (53) percent. Records must be maintained in accordance with Regulation 1698, *Records*, to support any nontaxable allocation percentage greater than fifty-three (53) percent. Staff and CNPA have agreed to add definitions in the regulation of what constitutes a "digital-only subscription" and a "print-only subscription" for purposes of the rebuttable presumption.

Prospective Basis for Amendments

Under Revenue and Taxation Code section 7051, "[t]he board may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect." In other words, when the Board wishes to limit the retroactive effect of a regulation, or amendments thereto, it is authorized to do so, and would accomplish it by taking affirmative action in the regulatory process by means of specifying an operative date for the amendments. Staff recommends that the amendments pertaining to the application of tax to mixed newspaper subscriptions have a prospective application beginning October 1, 2016, so that retailers of such subscriptions are notified well in advance and can modify any record-keeping or billing systems as needed.

Other Proposed Amendments

Newspapers and Periodicals Distributed by 501 (c)(3) and Other Nonprofit Organizations

During the process of drafting the proposed amendments discussed above, staff noted an inconsistency in Revenue and Taxation Code (RTC) section 6362.8 and Regulation 1590 (b)(5)(B). To ensure consistency with the statute, staff proposes to amend Regulation 1590 subdivision (b)(5)(B) to specify that the exemption with respect to other nonprofit organizations only applies to those newspapers and periodicals that are "regularly issued at average intervals not exceeding three months." Staff further proposes to clarify this "interval requirement" in the related exemption certificates (Certificates C and D).

Effective Dates and Obsolete Guidance

In order to increase the readability and relevance of the guidance in Regulation 1590, staff proposes amendments throughout the regulation to eliminate the effective dates that are no longer relevant and any guidance that has become obsolete due to the passage of time. This includes deleting section 6362.3 from the regulation's reference section as it relates to guidance in Regulation 1590 (b)(3) with respect to subscriptions prepaid prior to July 15, 1991.

VI. Alternative 1 - Staff Recommendation

A. Description of Alternative 1

Staff recommends the Board approve and authorize publication of the proposed amendments to Regulation 1590, as set forth in Exhibit 2. The proposed amendments clarify the application of tax to mixed newspaper subscriptions by establishing that fifty-three (53) percent of the charge is presumed to be for the nontaxable sale of the right to access digital content (nontaxable allocation). Taxpayers may rebut the presumption by producing documentation establishing that the nontaxable allocation is greater than fifty-three (53) percent.

B. Pros of Alternative 1

- Taxpayers will have a specific percentage to allocate between the taxable and nontaxable amounts in a mixed newspaper subscription.
- Taxpayers may establish a greater allocation percentage by producing evidence sufficient to rebut the presumption.
- Creates consistency with respect to the application of tax to mixed newspapers subscriptions, which makes administration and compliance easier.
- A prospective date will ensure publishers are notified in advance and can modify recordkeeping systems as needed.

C. Cons of Alternative 1

None.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required; however, staff's recommendation does require regulatory change.

E. Operational Impact of Alternative 1

Staff will publish the proposed amendments to Regulation 1590 and begin the formal rulemaking process.

F. Administrative Impact of Alternative 1

1. Cost Impact

The workload associated with publishing the regulation is considered routine. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

Amendments to Regulation 1590 will provide clarity to newspaper publishers regarding the application of tax to subscriptions for newspapers that include or combine access to digital content. Newspaper publishers can use the specified percentage or a rebuttable presumption to demonstrate a nontaxable allocation greater than fifty-three (53) percent.

H. Critical Time Frames of Alternative 1

None.

VII. Other Alternatives

A. Description of Alternative 2

Do not amend Regulation 1590.

B. Pros of Alternative 2

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The BOE will not incur the workload associated with revising the regulation.

C. Cons of Alternative 2

Newspaper publishers will have to make difficult and time-consuming calculations based on a formula to allocate tax to mixed subscriptions of newspapers.

D. Statutory or Regulatory Change for Alternative 2

None.

E. Operational Impact of Alternative 2

None.

F. Administrative Impact of Alternative 2

1. Cost Impact

None.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 2

None.

H. Critical Time Frames of Alternative 2

None.

Preparer/Reviewer Information

Prepared by: Tax Policy Division, Sales and Use Tax Department

Current as of: January 4, 2016

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



Regulation 1590, Newspapers and Periodicals

I. Issue

Whether the Board should amend Regulation 1590, *Newspapers and Periodicals*, to clarify the application of tax to subscriptions of newspapers that include or combine access to digital content.

II. Alternative 1 - Staff Recommendation

Staff recommends the Board approve and authorize publication of the proposed amendments to Regulation 1590, as set forth in Exhibit 2. The proposed amendments clarify the application of tax to mixed newspaper subscriptions by establishing that fifty-three (53) percent of the charge is presumed to be for the nontaxable sale of the right to access digital content (nontaxable allocation). Taxpayers may rebut the presumption by producing documentation establishing that the nontaxable allocation is greater than fifty-three (53) percent. Staff's amendments are supported by the California Newspaper Publishers Association (CNPA).

III. Other Alternative(s) Considered

Do not approve the proposed amendments to Regulation 1590.

Background, Methodology, and Assumptions

Alternative 1 – Staff Recommendation

There is nothing in the staff recommendation that would impact revenue. The proposed amendments clarify the application of tax to mixed newspaper subscriptions by establishing that fifty-three (53) percent of the charge is presumed to be for the nontaxable sale of the right to access digital content (nontaxable allocation). Taxpayers may rebut the presumption by producing documentation establishing that the nontaxable allocation is greater than fifty-three (53) percent.

Other Alternatives Considered

There is nothing in Alternative 2 that would impact revenue.

Revenue Summary

Alternative 1 – staff recommendation does not have a revenue impact.

Other alternatives considered – alternative 2 does not have a revenue impact.

Preparation

Mr. Bill Benson, Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. This estimate has been reviewed by Mr. Mark Durham, Manager, Research and Statistics Section, Legislative and Research Division, and by Ms. Susanne Buehler, Chief, Tax Policy Division, Sales and Use Tax Department. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of January 5, 2016.

Regulation 1590. Newspapers and Periodicals.

Reference: Sections 6005, 6006, 6007, 6010, 6015, 6361.5, ~~6362.3~~, 6362.7, and 6362.8, Revenue and Taxation Code.

(a) Definitions.

(1) "Newspaper." The term "newspaper" as used herein conforms to the definition of a newspaper as set forth in a ruling of the United States Treasury Department published in the Federal Register, December 29, 1960. Under this definition, the term is limited to those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of a general interest. The term does not include handbills, circulars, flyers, or the like, unless distributed as a part of a publication which constitutes a newspaper within the meaning of this subparagraph. Neither does the term include any publication which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within the meaning of this subparagraph. For purposes of this subparagraph, advertising is not considered to be news of a general character and of a general interest.

(2) "Periodical." The term "periodical" as used herein is limited to those publications which appear at stated intervals, 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 in 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. An annual report of a corporation which is substantially different in style and format from the corporation's quarterly reports is not part of a series with the quarterly reports. The term "periodical" does not include books complete in themselves, even those that are issued at stated intervals, for example, books sold by the Book-of-the-Month Club or similar organizations; so-called "pocket books," a new one of which may be issued once a month or some other interval; or so-called "one-shot" magazines that have no literary or subject matter connection or continuity between prior or subsequent issues. The term does not include catalogs, programs, score-cards, handbills, price lists, order forms or maps. Neither does it include 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.

(3) "Ingredient or Component Part of a Newspaper or Periodical." The term "ingredient or component part of a newspaper or periodical" includes only those items that become physically incorporated into the publication and not those which are merely consumed or used in the production of the publication. For example, newsprint and ink are ingredients of a newspaper; however, a photograph does not become an ingredient or component part of a

* This definition is based upon *Business Statistics Organization, Inc. v. Joseph*, 299 N.Y. 443, 87 N.E. 2d 505, and *Houghton v. Payne*, 194 U.S. 88, 48 L.Ed 888.

newspaper or periodical merely because the image of the photograph is reproduced in the publication.

Handbills, circulars, flyers, order forms, reply envelopes, maps or the like are considered as component parts of a newspaper or periodical when attached to or inserted in and distributed with the newspaper or periodical.

(4) "Publisher." "Publisher" means and includes any person who owns the rights to produce, market, and distribute printed literature and information.

(5) "Distributor." "Distributor" means any person who acquires newspapers or periodicals for subsequent distribution to retailers or newspaper carriers.

(6) "Newspaper Carrier." "Newspaper carrier" means any person who acquires newspapers from a publisher or distributor to deliver to consumers. The term includes a hawker. A "hawker" is an individual who sells single copies of newspapers to passersby on a street corner or other trafficked area. "Newspaper carrier" does not include persons selling newspapers or periodicals from a fixed place of business.

(7) "Third Party Retailer." "Third party retailer" means and includes any person who sells at retail subscriptions to newspapers and periodicals who is not the publisher of the newspapers or periodicals. Typically, third party retailers solicit subscriptions in a single offering for a large number of different publications, require that payment be made to the account of the third party retailer, and undertake to resolve subscription problems. The term includes persons commonly known as direct mail, school, paid during service, cash, catalog, and telephone agents. "Third party retailer" does not include persons who solicit renewals of subscriptions on behalf of individual publishers.

(8) "Mixed Newspaper Subscription." "Mixed newspaper subscription" means and includes a subscription for a tangible newspaper combined with a subscription for the right to access digital content.

(9) "Digital-Only Subscription Rate." "Digital-only subscription rate" means the price a customer would pay to access digital content from a newspaper publisher, exclusive of any promotions or discounts, without any print delivery.

(10) "Print-Only Subscription Rate." "Print-only subscription rate" means the price a customer would pay to have the print edition of a newspaper delivered to their home, exclusive of any promotions or discounts, without any access to digital content.

(b) Application of Tax.

(1) In General. ~~Effective July 15, 1991, t~~The sale of newspapers and periodicals, including sales by third party retailers, is subject to tax unless otherwise exempt.

Tax does not apply to sales of tangible personal property to persons who purchase the property for incorporation as a component part of a newspaper or periodical which will be sold notwithstanding that the purchaser is not the seller of the newspaper or periodical.

See Regulation 1574 (18 CCR 1574) for the application of tax to sales through vending machines and Regulation 1628 (18 CCR 1628) for the application of tax to transportation charges.

(2) Distributions of Newspapers and Periodicals Without Charge. ~~Effective October 2, 1991,~~ Tax does not apply to the sale or use of tangible personal property which becomes an ingredient or component part of a copy of a newspaper or periodical regularly issued at average intervals not exceeding three months when that copy of such newspaper or periodical is distributed without charge, nor does tax apply to such distribution.

Newspapers and periodicals distributed on a voluntary pay basis shall be considered as distributed without charge. Newspapers and periodicals are distributed on a voluntary pay basis when payment is requested from the consumer but is not required.

(3) Subscriptions. ~~The sale or use of newspapers and periodicals is exempt from tax during the term of a prepaid subscription if the purchaser ordered and paid for the subscription prior to July 15, 1991.~~

~~Effective November 1, 1992,~~

(A) Exempt Subscriptions. Tax does not apply to the sale or use of a periodical, including a newspaper, which appears at least four, but not more than 60 times each year, which is sold by subscription, and which is delivered by mail or common carrier. For example, a daily newspaper is not a periodical for the purposes of this subdivision (b)(3). Tax does not apply to the sale or use of tangible personal property which becomes an ingredient or component part of such a periodical.

~~Sales tax reimbursement collected on the sale of a periodical subscription prior to the November 1, 1992 effective date of the exemption for the sale of issues delivered on or after November 1, 1992 constitutes excess tax reimbursement. The retailer must refund the tax reimbursement to the customer or pay it to the state in accordance with subdivision (b) of Regulation 1700 (18 CCR 1700).~~

(B) Mixed Newspaper Subscriptions. In the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt or excluded) and the right to access the digital content is not subject to tax.

1. For sales of mixed newspaper subscriptions made on and after October 1, 2016, forty-seven (47) percent of the charge for the mixed newspaper subscription is presumed to be the taxable measure from the sale of tangible personal property and tax applies to that amount; the remaining fifty-three (53) percent is presumed to be the nontaxable sale of the right to access the digital content.

2. This presumption may be overcome by evidence demonstrating to the satisfaction of the board that the digital-only subscription rate divided by the sum of the print-only subscription rate and the digital-only subscription rate is greater than fifty-three (53) percent. Taxpayers shall maintain records to substantiate a nontaxable allocation

greater than fifty-three (53) percent. Rates shall not be computed more often than once per quarter.

(C) Reporting Subscription Sales. Each delivery of a newspaper or periodical pursuant to a subscription sale is a separate sale transaction. When the sale is subject to tax, the retailer must report and pay the tax based upon the reporting period within which the delivery is made. The subscription price shall be prorated over the term of the subscription period.

(4) Membership Organizations. Generally, tax applies to sales of newspapers and periodicals by membership organizations. If the price is separately stated, tax applies to that amount. If the price is not separately stated, the measure of tax is the fair retail selling price of the publication.

The application of tax to distributions of newspapers and periodicals by nonprofit organizations is provided at subdivision (b)(5). The application of tax to sales of periodicals by subscription is provided at subdivision (b)(3).

(5) Nonprofit Organizations.

(A) Internal Revenue Code Section 501(c)(3) Organizations. ~~Effective November 1, 1991, until October 31, 1992, t~~Tax does not apply to the sale or use of any newspaper or periodical distributed by an organization that qualifies for tax exempt status under section 501(c)(3) of the Internal Revenue Code, nor tangible personal property which becomes an ingredient or component part of any such newspaper or periodical; regularly issued at average intervals not exceeding three months~~only as to issues~~ and distributed under either of the following circumstances:

1. The issues are distributed to the organization's members in consideration of the organization's membership fee; or
2. The issues are of a newspaper or periodical which neither receives revenue from, nor accepts, any commercial advertising.

~~Effective November 1, 1992, the exemption is applicable only as to a newspaper or periodical regularly issued at average intervals not exceeding three months.~~

For purposes of this subdivision, any governmental entity established and administered for the purposes provided in Internal Revenue Code Section 501(c)(3) shall be considered to be an organization that qualifies for tax exempt status under that section.

(B) Other Nonprofit Organizations. ~~Effective November 1, 1991, t~~Tax does not apply to the sale or use of any newspaper or periodical regularly issued at average intervals not exceeding three months and distributed by a nonprofit organization, nor tangible personal property that becomes an ingredient or component part of or any such newspaper or periodical, only as to issues distributed pursuant to both of the following requirements:

1. The issues are distributed to the organization's members in consideration, in whole, or in part, of the organization's membership fee;
2. The amount paid or incurred by the nonprofit organization for the cost of printing the newspaper or periodical is less than ten percent of the membership fee attributable to the period for which the newspaper or periodical is distributed, whether the publication is printed within or without this state. The cost of printing shall be determined as follows.

The cost of printing includes costs of tangible personal property purchased to become an ingredient or component part of the newspaper or periodical (e.g., ink and paper) and costs of labor to print the newspaper or periodical. The cost of printing does not include costs not attributable to actual printing, such as costs of special printing aids, typography, and preparation of layouts.

If the organization contracts with an outside printer to print the newspaper or periodical, the organization shall obtain and retain documentation segregating the costs of printing from the printer's other charges.

If the organization is the printer of the newspaper or periodical, the cost of printing includes the aggregate of the cost of tangible personal property purchased to become an ingredient or component part of the newspaper or periodical; labor of printing, including fringe benefits and payroll taxes; and other costs attributable to the actual printing of the newspaper or periodical.

If an organization has published the newspaper or periodical for a period exceeding twelve months and the method of printing has not changed, the organization may elect to consider the cost of printing for a reporting period to be equal to the amount paid or incurred for the same reporting period for the previous fiscal or calendar year.

(6) Newspaper Carriers. A newspaper carrier is not a retailer. The publisher or distributor for whom the carrier delivers is the retailer of the newspapers delivered. The publisher or distributor shall report and pay tax measured by the price charged to the customer by the carrier.

(7) Consumption of Property. Tax applies to the sale to or use by a newspaper or periodical publisher of tangible personal property consumed in the manufacturing process. Tax does not apply to the cost of tangible personal property lost or wasted in the manufacturing process when that property was purchased for the purpose of incorporation into a newspaper or periodical to be sold or to be distributed in accordance with subdivision (b)(2).

~~(8) Fixed Price Contracts. The sale or use of newspapers and periodicals is exempt from tax during the term of a prepaid subscription if the purchaser ordered and paid for the subscription prior to July 15, 1991.~~

(98) School Catalogs and Yearbooks. Public or private schools, county offices of education, school districts, or student organizations are the consumers of catalogs and yearbooks

prepared for or by them, and tax does not apply to their receipts from the distribution of the publications to students.

Tax applies to charges for the preparation of such publications made to public or private schools, county offices of education, school districts, or student organizations by printers, engravers, photographers and the like.

(c) Exemption Certificates. Any seller claiming a transaction as exempt from sales tax pursuant to Revenue and Taxation Code sections 6362.7 or 6362.8 should timely obtain an exemption certificate in writing from the purchaser. The exemption certificate will be considered timely if obtained by the seller at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property.

(1) Certificate A. Certificate to be used for purchases of tangible personal property for incorporation into newspapers or periodicals for sale in accordance with subdivisions (b)(1) or (b)(3), above.

(2) Certificate B. Certificate to be used for purchases of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed without charge in accordance with subdivision (b)(2), above.

(3) Certificate C. Certificate to be used for purchases of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed by organizations which qualify for tax-exempt status under Internal Revenue Code section 501(c)(3) in accordance with subdivision (b)(5)(A), above.

(4) Certificate D. Certificate to be used for purchases of tangible personal property that becomes an ingredient or component part of newspapers or periodicals that are distributed by nonprofit organizations in accordance with subdivision (b)(5)(B), above.

Certificate A

California Sales Tax Exemption Certificate

Sales of tangible personal property for
incorporation into a newspaper or periodical for sale

(Name of Purchaser)

(Address of Purchaser)

I HEREBY CERTIFY:

Initial one of the following:

____ That I hold valid seller's permit No. _____ issued
pursuant to the Sales and Use Tax Law.

____ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I
do not sell any tangible personal property for which a permit is required.

I further certify that the tangible personal property described herein which I shall purchase
from

(Name of Vendor)

will become a component part of the newspaper or periodical *

and sold as a component part of the publication.

I understand that in the event any such property is sold or used other than as specified
above or used other than for retention, demonstration, or display while holding it for sale in
the regular course of business, I am required by the Sales and Use Tax Law to report and
pay any applicable sales or use tax. Description of the property to be purchased:

Date: _____, 19 _____

(Signature of Purchaser or Authorized Agent)

(Title)

* Insert name and type of newspaper or periodical

Certificate B

California Sales Tax Exemption Certificate

Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed without charge

(Name of Purchaser)

(Address of Purchaser)

I HEREBY CERTIFY:

Initial one of the following:

____ That I hold valid seller's permit No. _____ issued pursuant to the Sales and Use Tax Law.

____ That I do not hold a seller's permit issued pursuant to the Sales and Use Tax Law. I do not sell any tangible personal property for which a permit is required.

I further certify that I am engaged in the business of publishing *

which is regularly issued at average intervals not exceeding three months and distributed without charge by me. The tangible personal property described herein which I shall purchase from

(Name of Vendor)

will become a component part of the publication listed above. I understand that if I use any of the property purchased for any other purpose I am required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of ~~the~~ such property.

Description of property to be purchased:

Date: _____, 19 _____

(Signature of Purchaser or Authorized Agent)

(Title)

* Insert name and type of newspaper or periodical

Certificate C

California Sales Tax Exemption Certificate

Sales of tangible personal property that becomes an ingredient or component of newspapers or periodicals that are distributed by organizations which qualify for tax-exempt status under Internal Revenue Code section 501(c)(3)

(Name of Purchaser)

(Address of Purchaser)

I HEREBY CERTIFY:

Initial one of the following:

That I hold valid seller's permit No. _____ issued pursuant to the Sales and Use Tax Law.

That the purchaser does not hold a [seller's](#) permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

I further certify that the purchaser is an organization that qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is engaged in the business of selling or publishing *

[which is regularly issued at average intervals not exceeding three months.](#)

The tangible personal property described herein which I shall purchase from

(Name of Vendor)

will be sold in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and (check one or both):

The organization will distribute the newspaper or periodical to the members of the organization in consideration of payment of the organization's membership fee or to the organization's contributors,

The publication does not receive revenue from or accept any commercial advertising.

I understand that in the event any such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of the property to be purchased:

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Page 10 of 12

Date: _____, 19 _____

(Signature of Purchaser or Authorized Agent)

(Title)

* Insert name and type of newspaper or periodical

Certificate D

California Sales Tax Exemption Certificate

Sales of tangible personal property which becomes an ingredient or component part of newspapers or periodicals that are distributed by nonprofit organizations

(Name of Purchaser)

(Address of Purchaser)

I HEREBY CERTIFY:

Initial one of the following:

____ That the purchaser holds valid seller's permit No. _____ issued pursuant to the Sales and Use Tax Law.

____ That the purchaser does not hold a seller's permit issued pursuant to the Sales and Use Tax Law. The purchaser does not sell any tangible personal property for which a permit is required.

I further certify that the purchaser is a nonprofit organization which is engaged in [the](#) business of selling or publishing *

[which is regularly issued at average intervals not exceeding three months.](#)

The tangible personal property described herein which I shall purchase from

(Name of Vendor)

will be resold by the organization in the form of tangible personal property or will become a component part of a newspaper or periodical distributed by the organization and both of the following apply:

(A) Distribution will be 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.

I understand that in the event any of such property is sold or used other than as specified above or used other than for retention, demonstration, or display while holding it for sale in the regular course of business, I am required by the Sales and Use Tax Law to report and pay any applicable sales or use tax. Description of property to be purchased:

Date: _____, 19 _____

(Signature of Purchaser or Authorized Agent)

(Title)

* Insert name and type of newspaper or periodical



CALIFORNIA NEWSPAPER PUBLISHERS ASSOCIATION
CNPA Services, Inc.

2701 K Street Sacramento, CA 95816 ♦ Ph: 916.288.6000 ♦ Fax: 916.288.6002 ♦ www.cnpa.com

November 3, 2015

Susanne Buehler, Chief
Tax Policy Division,
Sales and Use Tax Department
State Board of Equalization
450 N Street
Sacramento, California 94279-0092

RE: Proposal to Amend Regulation 1590, Newspapers & Periodicals

Dear Ms. Buehler:

On behalf of the California Newspaper Publishers Association, I am submitting the following comments regarding the proposal to amend Regulation 1590, Newspapers and Periodicals as provided in the Second Discussion Paper. Please note the proposed language for Mixed Newspaper Subscriptions contained in this submission replaces the language we proposed in our October 14, 2015 letter to the Board.

At the recent Interested Parties Meeting (IPM) in September, we provided to BOE staff a list of twenty seven (27) newspapers (whose frequency of publication was either daily or several times per week) that we surveyed to obtain their subscription rate information. After obtaining the rates for the various types of print and digital subscriptions offered by each of the 27 newspapers, we averaged those rates for each publication.

Applying the same methodology that was approved by the Board when it issued its initial Private Letter Ruling (PLR), we determined the print and digital allocations for each of the 27 publications. The non-taxable digital allocations ranged from a low of 44% to a high of 63% with the average being 54% across all 27 newspapers.

We testified at the September IPM, however, that 54% does not accurately reflect rapidly changing developments in the industry. Many newspapers, to remain viable, are decreasing the frequency of their print products and relying on more robust digital content posting on their websites. For this reason, we think that 60% is a more accurate percentage for purposes of establishing the rebuttable presumption that reflects the non-taxable digital portion of a Mixed Newspaper Subscription. Moreover, by using 60% as the figure for the rebuttable presumption (which CNPA believes may still be conservative), it would be less likely that the stakeholders will be back before the BOE in the next year or two to seek an adjustment.

CNPA Comments re: Proposal to Amend Regulation 1590

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Page 2

In the Second Discussion Paper issued by BOE staff prior to the September IPM meeting, staff proposed bifurcating Mixed Newspaper Subscriptions into two categories – one that would include print products that are distributed four (4) days or more per week and the other that would include print products that are distributed three (3) days or less per week. Additionally, the proposal would establish two different percentages to be used as the rebuttable presumption for each category.

As we stated at the IPM, CNPA thinks the proposal to create two categories and two rates would be considerably burdensome and unnecessarily complicated for newspapers (as well as BOE staff) to calculate with little, if any, benefit to newspapers or the state. CNPA would not support this approach.

CNPA identified what may be an inadvertent omission in the proposed language on page 3 of Exhibit 1 of the Second Discussion Paper, Regulation 1590 (b)(3)(B). The proposal currently reads:

“(B) Mixed Newspaper Subscriptions. In the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt) and the right to access digital content is not subject to the tax.”

CNPA urges staff to incorporate the following language in its proposed amendments to regulation 1590 (additions in italics) to reflect current practices with regard to those newspapers who utilize Regulation 1628 when reporting to the BOE:

“(B) Mixed Newspaper Subscriptions. In the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt *or excluded*) and the right to access digital content is not subject to the tax.”

The following proposed language incorporates the cumulative changes CNPA has proposed regarding amendments to Regulation 1590 in the Initial and Second Discussion Papers as well as language that establishes the presumption and includes the standard and documentation for overcoming it. (additions in italics, deletions in strikeout):

“(B) Mixed Newspaper Subscriptions. In the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt *or excluded*) and the right to access the digital content is not subject to tax.

1. For sales of mixed newspaper subscriptions made on and after October 1, 2016, ~~in which tangible copies are distributed four days or more per week,~~ *it is presumed that sixty-two (62) forty (40) percent of the charge for the mixed newspaper subscription is regarded as the taxable measure* ~~from the sale of and tax applies to that amount;~~ *and the remaining thirty-eight (38) sixty (60) percent is presumed to be the nontaxable sale of the right to access the digital content.*

CNPA Comments re: Proposal to Amend Regulation 1590

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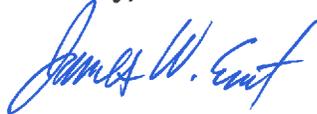
~~2. For sales of mixed newspaper subscriptions made on and after October 1, 2016, in which tangible copies are distributed three days or less per week, forty-eight (48) percent of the charge for the mixed newspaper subscription is regarded as the taxable measure from the sale of tangible personal property and tax applies to that amount; the remaining fifty-two (52) percent is regarded as the nontaxable sale of the right to access the digital content."~~

2. *For sales of mixed newspaper subscriptions made on and after October 1, 2016, a taxpayer may submit data that shows the non-tangible portion of a mixed subscription is greater than the percentages provided in subdivision (B)(1). The data shall include, but is not limited to, the taxpayer's individual home subscription and digital delivery rates.*

3. *If a taxpayer submits data described in subdivision (B)(2), the home subscription delivery rates shall be added to the digital delivery rate, the sum of which shall then be divided by the digital rate to determine if the mixed subscription is greater than sixty (60) percent."*

CNPA thanks the Board and its staff for the opportunity to participate in the process of developing this regulation. If you have any questions please don't hesitate to contact me at your earliest convenience.

Sincerely,



James W. Ewert
CNPA General Counsel

cc: Dean Eckenroth, CNPA President, Publisher *The Coronado Eagle and Journal*
Julie Xanders, Vice President and Assistant General Counsel, *Los Angeles Times*
Jeffrey Glasser, CNPA Governmental Affairs Committee Chairman and Vice President and Senior Counsel, *Los Angeles Times*
Thomas W. Newton, CNPA Executive Director
Nikki Moore, CNPA Staff Attorney

Hi Tracy:

Following is the revised proposed language (in red italics) submitted by CNPA that accurately reflects the allocation calculation discussed by the newspaper industry and BOE staff at both Interested Parties Meetings. I apologize for the confusion. Thank you for bringing the discrepancy to our attention and your diligence in ensuring that it is right. Please contact me at your earliest convenience if you have any questions or concerns.

Thanks,
Jim



James W. Ewert
CNPA General Counsel
2701 K Street
Sacramento, California 95816-5131

“(B) Mixed Newspaper Subscriptions. In the sale of a mixed newspaper subscription, tax is applied to the tangible personal property portion of the transaction (unless otherwise exempt *or excluded*) and the right to access the digital content is not subject to tax.

1. For sales of mixed newspaper subscriptions made on and after October 1, 2016, ~~in which tangible copies are distributed four days or more per week, it is presumed that sixty-two (62)~~ *forty (40)* percent of the charge for the mixed newspaper subscription is regarded as the taxable measure ~~from the sale of and tax applies to that amount; and the remaining thirty-eight (38)~~ *sixty (60)* percent is *presumed to be the* nontaxable sale of the right to access the digital content.

~~2. For sales of mixed newspaper subscriptions made on and after October 1, 2016, in which tangible copies are distributed three days or less per week, forty-eight (48) percent of the charge for the mixed newspaper subscription is regarded as the taxable measure from the sale of tangible personal property and tax applies to that amount; the remaining fifty-two (52) percent is regarded as the nontaxable sale of the right to access the digital content.”~~

2. *For sales of mixed newspaper subscriptions made on and after October 1, 2016, a taxpayer may submit data that shows the non-tangible portion of a mixed subscription is greater than the percentages provided in subdivision (B)(1). The data shall include, but is not limited to, the taxpayer’s individual home subscription and digital delivery rates.*

3. *If a taxpayer submits data described in subdivision (B)(2), the digital delivery rate shall be divided by the sum of home subscription delivery rates and the digital delivery rate to determine if the mixed subscription is greater than sixty (60) percent.”*