



STATE BOARD OF EQUALIZATION

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September 18, 2015

Dear Interested Party:

Enclosed is the Second Discussion Paper on Regulation 1590, *Newspapers and Periodicals*. Before the issue is presented at the Board's December 16, 2015 Business Taxes Committee meeting, staff would like to invite you to discuss the issue and present any additional suggestions or comments. Accordingly, an interested parties meeting is scheduled as follows:

**September 29, 2015
Room 122 at 10:00 a.m.
450 N Street, Sacramento, CA**

If you would like to participate by teleconference, call 1-888-808-6929 and enter access code 7495412. You are also welcome to submit your comments to me at the address or fax number in this letterhead or via email at Susanne.Buehler@boe.ca.gov by October 14, 2015. Copies of the materials you submit may be provided to other interested parties, therefore, ensure your comments do not contain confidential information. Please feel free to publish this information on your website or distribute it to others that may be interested in attending the meeting or presenting their comments.

If you are interested in other Business Taxes Committee topics refer to our webpage at (<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of discussion or issue papers, minutes, a procedures manual, and calendars arranged according to subject matter and by month.

Thank you for your consideration. We look forward to your comments and suggestions. Should you have any questions, please feel free to contact our Business Taxes Committee staff member, Mr. Robert Wilke, at 1-916-445-2137, who will be leading the meeting.

Sincerely,

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

SB:rsw

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
Mr. David Hunter, Board Member's Office, Third District
Ms. Shellie Hughes, 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. Alan Giorgi, Board Member's Office, First District
Mr. Brian Wiggins, Board Member's Office, First District
Mr. Jim Kuhl, Board Member's Office, Second District
Ms. Lizette Mata, 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
Mr. Russell Lowery, Board Member's Office, Fourth District
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Ms. Sue Blake, Board Member's Office, Fourth District
Mr. Jay Hite, Board Member's Office, Fourth District
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Ms. Lynn Bartolo (MIC 43)
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)
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Ms. Karina Magana (MIC 47)
Mr. Bill Benson (MIC 67)
Mr. Robert Wilke (MIC 50)

SECOND DISCUSSION PAPER

Regulation 1590, *Newspapers and Periodicals*

Issue

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

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 periodicals, including those sold under a subscription. A newspaper is a publication that is

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Regulation 1590, *Newspapers and Periodicals*

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 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 sale of newspapers and periodicals are 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.

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 apps. The digital content may be offered as a stand-alone product or combined with a subscription for printed newspaper delivery. The price of a subscription that includes both print and digital content is often less than the price of the two items priced separately (if those options are offered). Furthermore, the subscription packages may vary in the content and frequency of delivery (for example, daily print only, 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

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subscriptions are renewed or new offers or promotions are made available. This variance makes it difficult to allocate the subscription cost between taxable and nontaxable amounts in a fair, reasonable, and consistent manner. There appears to be little consistency in how the industry prices mixed newspaper subscriptions.

Interested Parties Comments

Staff held an interested parties meeting on August 5, 2015 to discuss the Initial Discussion Paper and staff's proposed amendments. During the meeting, interested parties appeared open to considering the use of a specified percentage to allocate between the taxable and nontaxable amounts in a mixed newspaper subscription.

Following the interested parties meeting, staff received comments from Mr. James Ewert on behalf of the California Newspaper Publishers Association (CNPA), in a letter dated August 17, 2015 (Exhibit 2). CNPA expressed support in concept of staff's proposed amendments and acknowledges that the proposed amendments recognize the growing use of mixed subscriptions within the newspaper industry. CNPA further asserts that staff's proposed percentage for determining the nontaxable portion of a mixed newspaper subscription may not reflect the circulation practices of the entire newspaper industry. CNPA stated that it is in the process of examining various methodologies and obtaining information to support their assertion. CNPA also reiterated comments made at the interested parties meeting that the established percentage should be a rebuttable presumption with the idea that a seller of mixed newspaper subscriptions could apply an alternate percentage if it could demonstrate that its unique facts and circumstances support such use.

Staff's Proposed Amendments

Staff proposes amendments to Regulation 1590, as shown in Exhibit 1, to provide a bright-line approach for determining taxable and nontaxable charges with respect to mixed newspaper subscriptions.¹ Staff proposes establishing two percentages depending on the number of days in which delivery of printed material occurs. Staff suggests adding subdivision (b)(3)(B)(1) to specify the taxable and nontaxable percentages applicable to mixed newspaper subscriptions in which delivery of printed material occurs four or more days per week. To determine the percentages specified in subdivision (b)(3)(B)(1), staff reviewed the websites of several major California newspapers. Staff used the available information to calculate an average ratio of the price of a subscription for access to digital content only to a subscription that includes daily print and access to digital content. Based on this initial research, staff believes that thirty-eight (38) percent is a fair and reasonable amount to allocate to the nontaxable portion of the sale of a mixed newspaper subscription. For example, if the price for a daily print subscription that includes full digital access is \$10.00, thirty-eight (38) percent of that price, or \$3.80, would be

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.

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Regulation 1590, *Newspapers and Periodicals*

allocated to the nontaxable digital content and sixty-two (62) percent of that price, or \$6.20, would be allocated to the taxable sale of the print subscription.

Staff further proposes adding subdivision (b)(3)(B)(2) to specify the taxable and nontaxable percentages applicable to newspaper subscriptions in which delivery of printed material occurs three days or less per week. Staff believes this additional percentage will better represent the relative value for those subscriptions for print copies to be delivered Friday through Sunday, weekends only, or other days of the week not to exceed three days. Staff has looked at a number of newspaper publisher's websites for subscription rates and other data to determine a fair and reasonable percentage, but the research is inconclusive. Nevertheless, staff has included sample language based on the limited information we were able to obtain. (See Exhibit 1). Staff is requesting input from industry as to a fair and reasonable percentage. Staff suggests the proposed amendments in subdivisions (b)(3)(B)(1) and (2) as a way to provide certainty and clarity to retailers and consumers of such products. Staff remains open to input from industry and other interested parties as to other alternatives to consider.

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 so that retailers of such subscriptions are notified well in advance and can modify any record-keeping or billing systems as needed.

Safe Harbor

Staff understands that there is great variance within the newspaper industry with respect to pricing models and product offerings. With this variance, it is very likely that staff's proposed percentages may not reflect every newspaper publisher's percentage based on the facts and circumstances of that business. However, 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 may be administered more efficiently and allows for greater clarity for newspaper publishers and their customers. However, staff also understands that some newspaper publishers may wish to determine a fair and reasonable allocation based on the specific facts and circumstances for their business. Staff is open to considering a “safe harbor” provision and welcomes interested parties to submit proposed regulatory language. Staff reiterates that it is important that such provision also explain the types of evidence or documentation that a retailer would retain to rebut the presumption.

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

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1590(b)(5)(B). For reference, RTC section 6362.8 provides, in part, that newspapers and periodicals distributed by 501(c)(3) and other nonprofit organizations are not subject to tax under specified circumstances. One of the requirements for the exemption is that the newspaper or periodical be “regularly issued at average intervals not exceeding three months.”

While Regulation 1590, subdivision (b)(5)(A), pertaining to 501(c)(3) organizations includes clarification that the newspaper and periodical must be “regularly issued at average intervals not exceeding three months,” subdivision (b)(5)(B) pertaining to other nonprofit organizations does not. 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 (Certificate 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.

Summary

Staff welcomes any comments, suggestions, and input from interested parties on this issue. Staff invites interested parties to participate in the September 29, 2015 interested parties meeting. The deadline for interested parties to provide written responses regarding this discussion paper is October 14, 2015.

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

Current as of September 14, 2015

1590 SDP.docx

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.

(b) Application of Tax.

(1) In General. ~~Effective July 15, 1991,~~ ~~†~~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, t~~

(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) 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, sixty-two (62) 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 thirty-eight (38) 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, 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.

(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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Staff's Proposed Amendments to Regulation 1590**

**Exhibit 1
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 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

August 17, 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:

I am writing on behalf of the California Newspaper Publishers Association to express the Association's support in concept of the proposal to amend Regulation 1590, Newspapers and Periodicals. The proposal would recognize the growing use of "Mixed Use Subscriptions" by the newspaper industry and reduce the taxpayer's liability using an amount that represents the charges for that portion that applies to non-tangible goods and services.

As used in the Initial Discussion Paper, the term "Mixed Use Subscription" is defined as a subscription for a tangible newspaper combined with a subscription for the right to access digital content.

At the recent Interested Parties Meeting (IPM), BOE Staff explained that it arrived at its proposed flat discounted rate of 38% based on its visits to various newspaper websites and noting the disparate charges for subscriptions to deliver the printed product versus online access to newspapers' digital content. BOE Staff seemed to express some frustration in relying on this methodology as a basis for its proposal.

At the IPM, Chris Christian spoke about the methodology that he used in an initial petition for a Private Letter Ruling (PLR) on behalf of his client on this issue. Interestingly, Mr. Christian's methodology was adopted by the BOE in the PLR it issued to his client and resulted in that client's tax liability being reduced by 38%.

CNPA believes that as applied to the circulation practices of the entire industry, though, 38% may not be an accurate representation because it is too low. We are examining various

Ms. Suzanne Buehler
BOE Proposed Amendment of Reg. 1590, Newspapers and Periodicals
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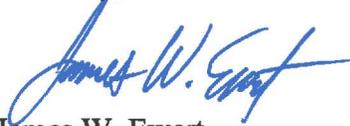
methodologies and are in the process of gathering additional information to support our assertion but, unfortunately, we need more time to complete this task. We apologize for not being able to meet today's deadline. CNPA anticipates that we will be able to gather the information and provide it to BOE Staff sometime in the next few weeks.

At the IPM, the newspaper industry also proposed the idea that the BOE should establish a percentage as a rebuttable presumption (similar to the currently proposed 38%) with the idea that a newspaper should have an opportunity to demonstrate that its unique facts and circumstances would reduce its liability further. Based on several comments made by BOE Staff the proposal seems to be reasonable.

CNPA thanks the Board and its staff for the opportunity to participate in the process of developing this regulation and we will submit the additional information to staff as soon as possible.

In an era when newspapers face increased competition from their non-taxed competitors, we look forward to working with the Board and staff to craft a standard that recognizes dramatic shifts in the industry's core audience and more accurately reflects how newspapers respond to these demanding challenges.

Sincerely,



James W. Ewert
CNPA General Counsel

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