

**STATE BOARD OF EQUALIZATION**

(916) 445-8485

June 6, 1988

Ms. B--- L---
[Magazine]
P.O. Box XXXX
--- ---, CA XXXXX

Dear Ms. L---:

This is in response to your letter to the Board's legal staff dated March 18, 1988. You have requested our opinion as to whether the sale to you of the publication of [Magazine] is exempt from sales tax pursuant to Sales and Use Tax Regulation 1541.5 (copy enclosed).

As we understand the facts, you sell advertising to realtors. This advertising is comprised of a narrative description of the land or homes the realtor is selling and the description may be accompanied by a photograph. You consolidate these listings and photographs into a publication called [Magazine]. You send the rough layout to [Magazine] Corporation in ---, Florida, for final artwork and printing. [Magazine] Corporation sends the completed publications to the Reno, Nevada, airport where a distribution company (J--- H--- D--- S---) picks the publications up and delivers them to various local businesses where the public at its discretion may pick up a copy for free. The distribution company also delivers 500-700 copies to you.

Except where the sales are specifically exempted by statute, sales tax applies to the gross receipts of retailers for all retail sales of tangible personal property in this state (Revenue and Taxation Code section 6051). Likewise, use tax is imposed on the storage, use, or other consumption in California of tangible personal property purchased from any retailer for storage, use, or other consumption in California unless otherwise exempted from taxation by statute (Rev. & Tax. Code § 6201). However, use tax is never imposed as a duplicate tax along with a sales tax because any use of property in California is exempt from use tax if the gross receipts from the sale of the property are included in the measure of the sales tax (Rev. & Tax. Code § 6401).

Section 6379.5 of the Revenue and Taxation Code provides an exemption from tax for the sales, storage, use, or other consumption in this State of catalogs, letters, circulars, brochures, and pamphlets consisting substantially of printed sales messages for goods and services. To qualify for the exemption, the printed sales messages must be:

- (1) Printed to the special order of the purchaser for the principal purpose of advertising or promoting goods or services.
- (2) Mailed or delivered by the seller of the printed material, the seller's agent or a mailing house acting as the agent of the purchaser, through the United States Postal Service or by common carrier.
- (3) Received by any person, other than the purchaser or purchaser's agent, at no cost to that person who becomes the owner of the printed material.

Regulation 1541.5(b)(6) adds that the exemption will apply whether or not the purchaser of the printed sales message offers for sale the goods or services advertised in the printed sales message.

With the exception of the copies of the magazine delivered to you (discussed below), it is our opinion that the sales to you of [Magazine] is exempt from tax. Our opinion is grounded on the facts that the magazine is: printed to your special order; printed for the principal purpose of advertising or promoting goods or services; and delivered by common carrier to businesses where the consuming public become owners of the publication free of charge. As to those copies delivered to you, you correctly assumed that the printed sales message exemption does not apply since these transactions do not comport with the delivery requirements of the exemption.

With respect to the copies of the magazine, the sales of which qualify for exemption, you may issue your printer an exemption certificate in the form set out in Regulation 1541.5(c). Your issuance of the exemption certificate to the printer will enable him to report those sales to you of "Homes & Land of Tahoe/North" magazine as nontaxable transactions.

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

Very truly yours,

E. L. Sorensen, Jr.
Sr. Tax Counsel

ELS:md