



STATE BOARD OF EQUALIZATION

May 20, 1985

Dear

This is in response to your letter of March 20, 1985, which was addressed to Mr. J. D. Dotson. Your letter was referred to the undersigned for reply.

You have inquired concerning application of our Sales and Use Tax Regulation 1590, "Newspapers and Periodicals," to sales of multiple listing service books. You wrote to us following the meeting which occurred on March 4, 1985; between representatives of your association and staff members of the Board.

As was evident during the meeting of March 4, there have been some inconsistencies on the part of the staff of the Board in applying the exemption for periodicals to the sale and distribution of multiple listing service books. It has been your position that all multiple listing service books which conform to reasonable standards or criteria should qualify as exempt periodicals.

Revenue and Taxation Code Section 6362 provides that sales tax does not apply to the sale of newspapers or periodicals regularly issued at average intervals not exceeding three months. The term "periodical" is defined in Regulation 1590 to include only 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 subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them. The term does not include any publication of which the advertising portion exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period.

Clearly the regulation contemplates that there are two classifications of printed matter--qualifying material (news or information) and nonqualifying material (advertising). The question with respect to any printed material is one of classification. With respect to multiple listing service books, you suggest the following classification:

Advertising (To which the 90 percent criterion would apply):

- a. Active listings.

- b. Index of active listings.
- c. Actual display or classified advertising.

News or Information (To which the 10 percent criterion would apply):

- a. Off market information--that is information on previously active listings which have been removed from the market because the properties have been sold, the listings have expired or been withdrawn, with explanatory material on the reason for the change of status and in varying situations information on the sale price, reason for withdrawal, etc.
- b. Index of off market information.
- c. Reports of sales activity as a measure of comparing the user-reader experience with that of the general market and a measure of economic activity in general.
- d. A summary of new items in this issue of the periodical such as new listings, and off market information in its various categories.
- e. Rosters, such as rosters of brokers provided to enable the user-reader to easily contact other brokers in their various cooperative and organizational activities. These rosters will be variously presented often including addresses, branch office information, telephone numbers, names (and conceivably addresses and telephone numbers) of sales persons and other associate licensees.
- f. Maps.
- g. Public utility information including identification of utilities (including municipal utilities), services provided, places from which information can be obtained on service connections, disconnections, emergency services, rate data, credit data or business information.
- h. List of abbreviations used.
- i. A list of other Boards of Realtors with whom reciprocal relations are maintained by this MLS, conceivably including names, addresses and phone numbers on how those boards can be contacted.
- j. A check list of city or county or other local government unit requirements with respect to zoning, use permits, building permits, certificates of occupancy, and similar municipal type regulation, often with the names, addresses and phone numbers of the various municipalities or other governmental units within the jurisdiction of that Board of Directors from which information can be obtained.
- k. Data on ordinances regulating the display of "for sale" signs and other ancillary display materials.

- l. Information on schools (public and private) including locations, level of education, and frequency, phone numbers or other identification of officials to whom inquiries may be made.
- m. A list of city or other governmental services and persons or departments to be contacted with relationship to them, including such items as refuse disposal, sewer and sanitary, informational services such as those relating to geologic hazard zones, flood zones, etc. etc.
- n. Information on real estate lock boxes or key boxes with respect to registration, security or regulation and similar information on availability or utilization of signs.
- o. Lists of lawmakers (federal, state and local), government agencies and departments.
- p. Publication of the code of ethics or standards of practice to which participating Realtors are expected to adhere for their day to day guidance and reference.
- q. Equal Opportunity Codes: or the same purposes.
- r. News of Board of Realtors activities, meetings, educational offerings, seminars, promotional and social activities, programs sponsored by the Board of Realtors relating to such items as neighborhood security, support of charitable organizations, and the like.
- s. News of community, state and federal matters particularly affecting Realtors including such items as newly enacted laws or regulations, governmental policies on infrastructure, etc.
- t. News or information relating to trends in the financing of real estate transactions or of financial institutions and their policies in this subject areas.

We are in agreement with the suggested classifications set out above. Indeed, the classifications set out are consistent with the early and continuing interpretations made by the staff of the Board, although there have been some recent divergencies in particular cases. This has resulted from an erroneous interpretation of Regulation 1590 that there may be some printed matter classified as neither news or information nor as advertising, which first must be excluded before the 90 percent-10 percent test is applied. This interpretation is inconsistent with the regulation.

It is our intention to dispose of matters in the administrative process, including cases where notices of determination may have been issued to taxpayers, in a manner consistent with the classifications and conclusions stated in this letter. Persons who have paid taxes on a basis inconsistent with the standards stated in this letter should file claims for refund for any taxes erroneously paid.

It is our intention to publish the conclusions stated in this letter as to classification of materials appearing in multiple listing service books as an annotation in the Business Taxes Law Guide published by this agency.

It is our belief that with this step the certainty and consistency of application which you desire will be assured. The staff at this juncture does not plan to propose amendments to Regulation 1590 because the interpretations sought by your industry are both- consistent with the regulation and consistent with long-term administrative interpretation of the regulation. The problem from our viewpoint is one of communication. Utilization of the Business Taxes Law Guide will guarantee full communication within both the audit and legal staff of this agency and will make available the proper interpretation of the law as it applies in the context of interest to you in a publicly available and commonly utilized tax service.

We would be happy to provide a speaker to appear before your multiple listing service committee at one of your quarterly meetings, such as the meeting scheduled for July in San Jose, as suggested in your letter. The request for a speaker may be directed to the undersigned. We would anticipate that Mr. John Abbott of our legal staff would appear on our behalf. Mr. Abbott is familiar with Regulation 1590 and, as you know, was formerly employed by the California Department of Real Estate.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

GJJ:sr

cc: Mr. J. D. Dotson

bc: Mr. Robert Nunes
Mr. Glenn Bystrom
Mr. Donald J. Hennessy (Please annotate this letter.)
Mr. John Abbott
Mr. Robert Anderson (Please process the --- --- --- petition in accordance with the interpretations set forth in this letter. Herewith is the petition file.)