



STATE BOARD OF EQUALIZATION

LEGAL DIVISION – MIC: 85
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (916) 324-2655
FAX (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

BRAD SHERMAN
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

E. L. SORENSEN, JR.
Executive Director

June 10, 1996

Dear

This is in response to your letter dated March 1, 1996, in which you requested an exemption from sales tax for your sales of MLS books. Sales tax exemptions are only provided by statute. However, the legal staff issues opinions which may be relied upon by taxpayers in regard to specific questions.

In your letter you state:

"The major requirements of Revenue and Taxation Code Section 6363.7 which we must satisfy in order for the MLS book to qualify for sales tax exemption are:

1. Delivery by mail or common carrier.
2. The advertising portion does not exceed 90% of an entire issue in more than one-half of the issues during any twelve (12) month period.

"Item #1: We have a common carrier on both legs of the delivery of the MLS books.

1. Delivery from the Reno airport to our board offices at --- is provided by --- Delivery out of --- Nevada.
2. Delivery from our board offices to the pick-up point for members in the --- area is provided by --- Delivery Service out of --- Nevada.

"Item #2: Our MLS meets the requirement 12 months out of the year Advertising 90% and Non-Advertising 10%."

We understand that the Multiple Listing Service books (MLS) are published monthly and that you sell them to your member Realtors by subscription. We assume the "pick up point" you mention is not the subscribing Realtor's office but is instead a central point where all subscribing Realtors must go in order to receive their MLS books.

Section 6051 of the Revenue and Taxation Code imposes sales tax on retailers' retail sales of tangible personal property in this state unless the sale is specifically exempt from tax by statute. The measure of tax is the gross receipts from the retail sales in this state of tangible personal property.

Since you sell the MLS books to your members by subscription, the question arises as to whether or not such sales are subject to tax. Certain sales of newspapers and periodicals are exempt from tax. (Rev. & Tax. Code § 6362.7.) As explained in subparagraph (b) (3) of Sales and Use Tax Regulation 1590, tax does not apply to the sale of a periodical, which appears at least four times but not more than 60 times each year, which is sold by subscription, and which is delivered by mail or common carrier.

As noted above, in order for the sale of periodicals to qualify for the sales tax exemption, the periodicals must be delivered by mail or common carrier. We construe that to mean that the retailer delivers the periodical to the subscriber. There is no delivery to the subscriber in this case because the subscriber picks up the MLS books at the central location in -- -. Thus, your sale of the MLS books is subject to tax since the MLS books are not delivered to the subscriber by mail or common carrier regardless of whether or not they meet the requirements of a periodical.

As you noted, a publication does not qualify as a periodical if more than 90 percent of the printed area of the entire issue consists of advertising in more than one-half of the issues during any 12-month period. In other words, those issues must consist of at least 10% news or information of general interest. (Rev. & Tax. Code § 6362.7(c).) The Board's legal staff has taken the position that publications printed and distributed among a group of real estate firms showing (1) homes listed for sales, (2) corrections and other changes in the listing, and (3) list of properties that are sold, are not "periodicals." (Bus. Taxes L. Guide Annot. 385.0340, 11/20/57.) However, if the multiple listing service publication provides property sold data which goes beyond the mere listing of property sold such as information on particular pieces of property regarding; the geographical district, number of bedrooms, actual sales price, listed price, terms of sale, methods of financing, listing broker, seller broker, sales agents, date of sale, and number of days on the market, that information is considered "news" or information of general interest for the purpose of applying the "10% news test" described above. (Bus. Taxes L. Guide Annot. 385.0341, 12/18/75.) We note that you concluded that the MLS qualifies as a periodical since, in your opinion, it has less than 90% of the printed area devoted to advertising information. Without having a copy to review, we cannot ascertain whether we agree with your application of that criteria.

If the Board of Realtors changes its method of delivery so that it delivers the MLS books directly to the subscribers, we will be glad to review the publication to determine whether we agree with your conclusion. However, since we conclude that tax applies to your sales, you

should issue a resale certificate to your vendor to purchase the publications extax and report and pay sale of the sales tax on the total gross receipts from the publications.

If you have any further questions in regard to the matters contained herein, please do not hesitate to write again.

Yours very truly,

Anthony I. Picciano
Tax Counsel

AIP:cl
Enclosure (Reg. 1590)

cc: District Administrator