

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6450

November 21, 1991

Ms. S--- L---
S--- E---, Inc.
XXXX --- Road
--- ---, CA XXXXX

Dear Ms. L---:

This is reply to your September 6, 1991 letter regarding the application of sales tax to sales of publications to you by your printer.

You provided sample copies of "Century 21 Homes Magazine and "California Homes". You believe that the sales to you qualify for exemption from sales tax pursuant to Sales and Use Tax Regulation 1541.5, Printed Sales Messages.

You note that you do not mail the printed sales messages; you pay outside vendors to deliver the publications free to the public. The publications are shipped to your parking lot where the independent contractor picks them up to deliver. You note that you are requesting our opinion for the application of tax to the time prior to July 15, 1991.

The application of sales tax to the sale of printed sales messages was not changed on and after July 15, 1991. On that date, the exemption for the sale of certain newspapers and periodicals was repealed. However, the publications you sent for our review are printed sales messages, not newspapers or periodicals, and the application of tax to the sale of the publications remains the same on and after July 15, 1991.

The basis for exemption from sales tax for the sale of printed sales messages is Revenue and Taxation Code section 6379.5 which provides:

"There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the 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 printed to the special order of the purchaser

and mailed or delivered by the seller, the seller's agent, or a mailing house, acting as the agent for the purchaser, through the United States Postal Service or by common carrier to any other person at no cost to that person who becomes the owner thereof."

We believe that, under the facts you describe, the sales do not qualify for exemption. Since the publications are sent to your premises, they are not sent to "any other person at no cost to that person who becomes the owner thereof." The Board has taken the position that tax applies to sales of printed sales messages which are delivered to the purchaser. Your immediately turning the directories over to an independent contractor to the deliver to the recipients does not provide a basis for exemption.

You sent sample copies of two other publications, "Coastal Homes/Santa Cruz County" and "Property Pages". You note that these are samples of books that are exempt already. If the publications are delivered in the manner described in your letter, we disagree that the sale of the publications is exempt from tax pursuant to section 6379.5 and Regulation 1541.5.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr