



(916) 445-6450

March 17, 1992

REDACTED TEXT

Dear REDACTED TEXT:

This is in reply to your January 28, 1992 letter regarding the application of sales tax to charges by REDACTED TEXT under the following facts you provided from REDACTED TEXT' 1992 Business Plan:

“Phase I: Target market is comprised of real estate agents, loan agents, and insurance agents in the Sacramento area. Services will primarily be the creation and mailing of flyers by the following scenario: Agent will fax flyer to REDACTED TEXT's computer. Editing may take place if requested or necessary. A computer print-out will be made and taken to a copy house. Multiple copies will then be run through REDACTED TEXT's computer/printer for typing of addresses, through REDACTED TEXT's folder (machine), and postage meter, then mailed. Other services are available (see listing, next page).”

You sent a copy each of three sample flyers which you will create. The flyers are circulars which advertise the respective services of REDACTED TEXT, REDACTED TEXT, and REDACTED TEXT.

Under the facts you provide your transactions with the persons are retail sales of tangible personal property. The true object of your contract with the clients is the tangible personal property, i.e. brochures, which you create and distribute. (Cf. Sales and use Tax Reg. 1501, Service Enterprises Generally). As a retailer engaged in business as a seller in this state, you are required to hold a seller's permit. We understand that you have applied for the permit.

Revenue and Taxation Code section 6379.5 provides an exemption from sales tax for certain sales of printed sales messages. Enclosed is a copy of Sales and Use Tax Regulation 1541.5, Printed Sales Messages. We believe that the flyers you sent qualify as “printed sales messages” as defined at subdivision (a)(1) of the regulation. The exemption applies if the printed sales messages are:

- (1) Printed to the special order of the purchaser;

- (2) 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;
- (3) Received by any other person at no cost to that person who becomes the owner of the printed material.

As provided at subdivision (b)(5) of the regulation, to satisfy the common carrier requirement, it is only necessary that a common carrier be involved in some stage of the delivery.

Since you have the printer print the flyers to the special order of the customers and mail them through the United States Postal Service to prospective customers of the purchasers who become the owners of the flyers at no charge, your sale qualifies for the printed sales message exemption. When you obtain your seller's permit, you may issue a resale certificate to the copy house to purchase the copying ex-tax.

You sent a list of your services. One of these is "door-to-door deliveries." As noted above, in order for the sale of printed sales messages to be exempt, one criterion is that a common carrier be involved in at least one stage of the delivery. If you were to sell the printed sales messages and deliver them door-to-door and not involve a common carrier at some stage of the delivery, your sale would not be exempt.

Under your listing of other services, you include copying, presentation folders, and rubber stamps. Of course, if you make a retail sale of such property in California, your sale is subject to sales tax.

Your letter then explains Phase II of your Business Plan:

"Phase II: Phase I shall continue to grow. As the real estate market increases, additional services shall be provided for real estate agents. REDACTED TEXT will act as Real Estate assistant, liaison between lender, escrow, and agent, and clerical support. In addition, REDACTED TEXT will provide the agent with project support, such as phone solicitations. REDACTED TEXT will also meet with appraisers, termite, and roofers to provide access."

Tax does not apply to your charge for the services you describe in Phase II, assuming that you do not otherwise sell tangible personal property to your client. For example, if part of your clerical support involves transferring photocopies to the clients, you are responsible for reporting and paying sales tax on your sale of the photocopies.

You explained Phase III:

"Phase III: Phases I and II shall continue to grow. The new phase is comprised of the creation, manipulation and utilization of statistical studies, with the target market being small businesses. The starting target market is the same clientele base established in Phases I and II. The market will then be expanded to carry

REDACTED TEXT out of the real estate related industries in order to provide a more stable income base.”

If you do not otherwise sell tangible personal property to the client, tax does not apply to your charge for performing statistical studies. We cannot give you a definitive answer without a more complete description of what tangible personal property you may transfer to your clients.

During our telephone conversation, you noted that one of the support services you may perform for real estate agent clients is to provide tangible personal property for the agent to give as a gift to the agent’s client upon completion of a sale. Your providing the tangible personal property to the agent for a charge under these circumstances would be a retail sale of tangible personal property subject to sales tax.

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

Sincerely,

Ronald L. Dick  
Senior Tax Counsel

RLD:sr

Enc.

REDACTED TEXT