

(916) 445-6450

April 13, 1992

REDACTED TEXT

Dear REDACTED TEXT:

This is in reply to your February 27, 1992 letter supplementing your November 19, 1991 letter regarding the application of sales tax to sales of multiple listing service books.

You noted that most of the REDACTED TEXT, which are members of the REDACTED TEXT, operate a multiple listing service (MLS) to facilitate cooperation between brokers. Your letter continues:

“Under the rules of the REDACTED TEXT operated MLSs, participants make unilateral offers of compensation to other MLS participants by submitting listings to the MLS. The offers are accepted when participants who wish to cooperate with the listing broker identify buyers who are willing to purchase the listed properties at the listed prices or upon terms acceptable to the sellers.

“In most cases, these offers of MLS listings are maintained in a computer data base. The data bases may be accessed via modem by the participants and are also printed in book form. Some MLSs permit their participants to access the data base via modem without taking the book. Other MLSs require all of their participants to take the book even if they access the data base via modem.

“Many of the REDACTED TEXT operated MLSs contract with outside vendors who both maintain the computer data base of listings and print the data base in a book format. These vendors charge input or insertion fees for each listing entered into the data base as well as fees for the MLS books they print.”

You asked whether charges for the input/insertion fees would be taxable even if they were merely charges for the service of maintaining the database and had no bearing on the fees charged for the books.

If the vendors charge for an insert or for input into the database is entirely optional; that is, the vendor does not require the service as part of the sale of the books, the charge for the data insert or input is not subject to sales tax.

In reply to our January 6, 1992 letter, you note that input and insertion fees should not be included in the gross receipts of the sale of books even if the price of the book fluctuates with the number of listings printed. You cite, as an example, your purchasing of business cards from a printer. The price per card would decrease depending on the number of cards you order. We believe the transactions are different. If you purchase business cards, the total amount received by the vendor is clearly attributable to the sale of the tangible personal property, and the total amount is subject to tax. That situation differs from one where a vendor sells tangible personal property and provides a service. If a vendor gives a credit to a purchaser toward the sale price of tangible personal property in exchange for the purchaser's obtaining the nontaxable services, the amount of the credit is includable in the taxable gross receipts from the sale of the tangible personal property.

If you have further questions regarding this, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr