

**STATE BOARD OF EQUALIZATION**

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January 25, 1996

BURTON W. OLIVER
Executive Director

Mr. A--- E. C---
C--- A--- of R---
XXX --- Street, Suite XXXX
---, California XXXXX-XXXX

Dear Mr. C---:

On January 10, 1996, the State Board of Equalization held a public hearing and adopted Sales and Use Tax Regulation 1584, Membership Fees. At that public hearing, the California Association of Realtors ("CAR") submitted a letter dated January 9, 1996, to the members of the Board regarding the application of Regulation 1584 to membership fees for real estate trade associations and multiple listing service ("MLS"). A copy of that letter furnished to Mr. Burton W. Oliver, Executive Director, has been referred to me for response.

As you know, the retail sale of tangible personal property in California is subject to sales tax, measured by the gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) Regulation 1584, subdivision (a)(1) provides that membership fees related to the anticipated retail sale of tangible personal property are includable in taxable gross receipts when either: (A) the retailer sells its products only to members and the membership fee exceeds a nominal amount, or (B) regardless of the amount of the membership fee, the retailer sells its products for a lower price to a person who has paid the membership fee than to a person who has not paid the fee.

Subdivision (a)(2) of Regulation 1584 further provides that charges for membership fees not related to anticipated retail transactions are not subject to tax. Social organizations such as country clubs and other similar organizations are recognized as being essentially service organizations. Membership fees for service organizations are not related to anticipated retail transactions even though such organizations may incidentally sell tangible personal property. At the January 10, 1996, public hearing, the Board agreed with its staff that membership fees for trade associations, such as CAR and MLS, which are primarily service organizations, are not subject to tax.

The following factual background has been provided to the Board by CAR. CAR represents approximately 100,000 real estate licensees, who are involved in approximately 85 percent of the resale transactions in California. By joining a local association of realtors

("LAR"), a real estate licensee is automatically a member of both CAR and the National Association of Realtors ("NAR"). A real estate licensee who is interested in joining the trade association pays one membership fee. That membership fee is then divided among the three organizations, the LAR, CAR and NAR, the largest portion of which is paid to the LAR.

Members of a LAR are entitled to avail themselves to many benefits provided by the organization. First, in order to be designated as a "Realtor," a real estate licensee must be a member of a LAR. The term "Realtor" is a trademark. In addition to the privilege of being designated as a Realtor, the LAR provides its members with a variety of services. These services include local lobbying and public relations, business network meetings, local magazine or newsletter, information and education, adherence to codes of ethics, enforcement of professional standards, and arbitration of disputes between buyers and sellers and between brokers and agents.

Additionally, the LAR may operate a real estate store which sells standard real estate forms, signs, and other tangible personal property related to the real estate business. In some locations, the stores are open to the members of the public, while other locations open the stores only to members of the LAR. Moreover, in some locations where the stores are open to the public, a person who is not a member of the LAR may pay a higher price for the merchandise sold than a person who is a member of the LAR.

It is undisputed that sales of tangible personal property by the LARs operated stores are subject to sales tax. The only question is whether LAR membership fees are subject to tax. Based on the extensive services provided by the LARs, our conclusion is that charges for the membership fees are not related to anticipated retail transactions. Therefore, under subdivision (a)(2) of Regulation 1584, charges for LAR membership fees are not subject to tax. Because LARs are essentially service organizations, subdivision (a)(1)(B) of Regulation 1584 is inapplicable. The true object of the LAR memberships is that the members are entitled to avail themselves to the services provided by the LARs. Thus, the fact that the members of a LAR may be entitled to purchase certain products, or that certain products are sold at a discount, is a nominal benefit and is immaterial to the determination that the membership fees should not be included in the measure of tax.

With respect to the MLS membership fees, a majority of the members of LARs are also members of MLS. However, not all real estate licensees who are members of MLS are Realtors, that is, members of LARs. A MLS is provided, depending on the particular region of California, as part of the LAR, as a wholly owned subsidiary of the LAR, or as a separate entity that is totally independent of the LAR.

MLS members receive a variety of services, including, access to the computer database, a lockbox system, the right to show homes through caravans (broker tours of homes), marketing sessions for property, notices of new listings, commission sharing agreements, code of ethics, arbitration standards, business network meetings, and other related services that vary from MLS to MLS.

In addition to the services provided by the MLS, the MLS sells MLS books to their members. In order to purchase the MLS books, an individual must also be a member of a LAR. The charge for such MLS books is separate from both the membership fee for the MLS and the LAR. When the newspaper and periodical exemption does not apply, the retail sale of the MLS books is subject to tax.

In view of the extensive services provided to their members, it is evident that MLSs, like LARs, are essentially service organizations. Therefore, our conclusion is that under subdivision (a)(2) of Regulation 1584, charges for MLS membership fees are not subject to tax. The true object of a MLS membership is that the members benefit from the services provided by the MLS which are unrelated to anticipated retail transactions.

In summary, the primary purpose of trade associations such as MLS and LAR is the provision of services to their members. Individual members join such organizations for various reasons, among which are the promotion of collective education, action, and policy formation. The availability of certain products and discounts is only a nominal and incidental benefit. Therefore, because membership fees for trade associations such as MLS and LAR are not related to anticipated retail sales of tangible personal property, they should not be included in taxable gross receipts.

Sincerely,

Gary J. Jugum
Assistant Chief Counsel

GJJ:SHC:rz

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