STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC: 82)
450 N. STREET, SACRAMENTO CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916-324-2634

August 24, 1994

Re: Weekly Focus

Dear: ---

This is in response to your letter dated July 20, 1994 in which you write concerning the tax status of your publication, the Weekly Focus. You write that you believe your publication should qualify for a sales tax exemption.

You state that mortgage lenders and loan officers subscribe to your weekly publication which is sold by subscription and delivered by mail. You state that Weekly Focus has the same format each week, but weekly features a different informational finance related topic. You state that you "custom print" each copy of Weekly Focus to feature the name of your subscriber on the copy, and that the publication is designed so that a subscriber may make copies for distribution to the real estate community as a networking tool.

Enclosed with your letter were copies of two issues of Weekly Focus. Each is one page in length and entitled "Weekly Focus" in the upper right corner, with the subscriber's business logo, business name and address in the upper left corner. An article related to financing covers about one-half the page of each issue; the bottom portion of each issue contains what appears to be the name and phone number of the person who is the subscriber and a statement promoting that individual's business.

Discussion

Revenue and Taxation Code section 6362.7 contains the exemption to which your letter refers. In pertinent part that section reads:

> "(b) 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 tangible personal property which becomes an ingredient or component part of any periodical regularly issued at average intervals not exceeding three months, and

any such periodical, that is sold by subscription and delivered by mail or common carrier.

"(c) For purposes of this section, 'periodical' means any publication that appears at stated intervals at least four times per year, but not more than 60 times per year, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them. Each issue must be sufficiently similar in style and format to make it evident that it is one of a series. The term does not include printed sales messages, shopping guides, or other publications of which the advertising portion, including product publicity, exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period." (Rev. & Tax. Code § 6362.7(b) & (c).)

Since Weekly Focus is sold by subscription and delivered by mail, it fulfills the delivery and subscription requirements of the section. Subsection (b) also requires that a publication be regularly issued at average intervals not exceeding three months to qualify for the exemption, and subsection (c) further requires an exempt "periodical" to appear at stated intervals at least four times per year, but not more than 60 times per year. The title of the publication, Weekly Focus, and your letter indicate that the publication is issued weekly. If so, the interval of issuance requirements of the section are fulfilled. If the publication fulfills the other requirements necessary to be considered a "periodical" as defined in subsection (c), sales of it would qualify for a sales tax exemption as discussed below.

First, to be a periodical, each issue of the publication must contain news or information of general interest to some particular group of persons, and each issue must bear a relationship to prior or subsequent issues with respect to a similarity of subject matter and a connection between the different issues through the nature of the articles. If the two issues of Weekly Focus available for our review are representative of all issues of that publication in containing a different article on a finance related topic each week, and your subscribers, as you state, are mortgage lenders and loan officers, the publication would fulfill the requirements of the first elements of the definition of "periodical".

Second, to be a periodical, each issue of the publication must be sufficiently similar in style and format to make it evident that it is one of a series. If the two issues made available for our review are representative of all issues in their style and format, the publication would fulfill the requirements of the second element of the definition of "periodical" since the layout and typography of each issue is the same, each contains an article written in a similar manner concerning a finance related topic, and each is entitled "Weekly Focus".

The final element to the definition of "periodical" excludes a publication if its advertising portion exceeds 90 percent of the printed area of the entire issue in more than one-half of the issues during any 12-month period. While the bottom portion of Weekly Focus, which follows the informational article, is at least in part advertising, it does not exceed 90 percent of the printed area of each issue. If the two issues available for our review are representative of all other weekly issues, the bottom portion of the publication would not exceed 90 percent of the printed area of the entire issue in more than one-half of the issues in any 12-month period, and, therefore, the final element in order for the publication to be defined as a periodical would be met.

Weekly Focus differs from the usual periodical in that each copy of each issue is customized to its subscriber so that the individual subscriber has merely to reproduce the copy in order to have an informational and promotional flyer to distribute. In this way, unlike the usual periodical, each copy of the Weekly Focus is somewhat different. With the usual newsletter or other publication which qualifies as a periodical, the copy of each issue which goes to each subscriber is identical except for a mailing label or name and address imprint. If the text of the informational article in Weekly Focus were to be altered for each individual subscriber in each copy of an issue, we likely would conclude that the publication was not a periodical because the article(s) was not of sufficient general interest to the group of subscribers without alteration for each subscriber. However, in the factual situation presented by your letter, we conclude that the customized or altered material is more like a change of name and mailing address for each subscriber than it is like a change in the informational material provided to each subscriber. Therefore, we conclude that the sale of Weekly Focus, as described in this opinion letter, qualifies for the exemption provided by Revenue and Taxation Code section 6362.7. As such, no sales tax is owed on your sales of Weekly Focus to subscribers to whom it is mailed weekly.

I hope this information is of assistance. Please write again if you have further questions.

Sincerely,

Sharon Jarvis
Staff Counsel

SJ: es
cc: KH - District Administrator

July 20, 1994

State Board of Equalization
9823 Old Winery Place, Suite 1
Sacramento, CA 95827-1731

Dear Sirs:

I would like a written determination of the sales tax status of my product that I call the Weekly Focus for which I have been charging my subscribers sales tax. I believe that I should qualify for the sales tax exemption for periodicals sold by subscription and delivered by mail.

Mortgage lenders and loan officers subscribe to my Weekly Focus, and I custom print each Focus to feature the name of my subscriber on their copy. Each Focus has the same format except that I feature a different informational finance related topic each week. All of my subscribers are receiving their Weekly Focus by mail. The Weekly Focus is designed so that my subscriber can make copies for distribution to the real estate community as a networking tool.

Enclosed are some sample copies of the Weekly Focus. If I do qualify for the sales tax exemption, I would like to be able to save my subscribers the sales tax expense that they are currently paying.

Sincerely,

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FHA 203(k)

The FHA 203 (k) loan program allows a purchaser or a property owner ability to include the cost of repairs to the property as part of the financing, even though the repairs will not be completed until after the loan funds. Expect to hear more and more about FHA 203(k) financing in the near future.

FHA 203(k) financing is available to both owner occupant purchasers and investor purchasers. Existing owners can also refinance their properties to obtain the funds to make needed repairs. There is also a creative "escrow commitment" procedure to allow a loan to be funded based upon the "after improved" value of the property so a buyer can assume the loan after the property has been repaired. A first time homebuyer can assume FHA 203(k) loans with no down payment requirement.

Because of the different possible FHA 203(k) financing scenarios there are at least seven variants of FHA 203 (k) financing that involve distinct financing parameters. In general the maximum loan calculation rules for regular FHA 203(b) financing apply to the FHA 203(k) loans except that the repair costs are added to the purchase price or existing debt to calculate the maximum loan amount. Investor FHA 203(K) loans require the 15% down payment.

When there is an escrow commitment set up, the loan amount is based upon the upfront appraisal of the projected "after improved" value of the property, less a normal FHA down payment. The purchase price or refinance amount is disbursed at close of escrow. The funds to cover the repair costs remain in escrow and are disbursed in up to five draws as the repairs are completed. The additional equity representing the owner's profit remains in the "escrow commitment". The borrower has six months to complete the repairs and eighteen months to sell the property. If the property does not sell by the deadline, the escrowed funds are applied toward a principal reduction in the loan amount. There are some extra costs to cover the additional red tape required to administer the funding of the repair work under FHA 203(k) financing.

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INTEREST RATE STABILITY

Twenty years ago, many mortgage lenders set their interest rates once a week. Today, it is common for interest rates to go through two pricings a day. Why have interest rates become less stable?

To answer this question we must look at where the money comes from for mortgages. Twenty years ago, the majority of mortgage loans came directly from savings and loans, banks, and other depositor institutions. These institutions took in savings and/or checking deposits and pooled the funds to lend to borrowers. The financial industry was regulated in such a way that the cost of money to lenders remained stable, thus providing for stability in mortgage interest rates. However, one problem with this system was that whenever borrowers could earn higher interest elsewhere, they withdrew their savings, and suddenly the financial institutions had no money to lend.

Deregulation solved the tight money crises in that savings institutions were allowed to pay a high enough interest to keep from losing their saving deposits. The change also forced savings institutions to concentrate on offering adjustable rate mortgages so that they could remain profitable whenever their cost of money increased.

In the meantime, the secondary market for fixed rate mortgages matured under the sponsorship of Ginnie Mae, Fannie Mae, and Freddie Mac. Mortgage banks and other financial institutions were able to sell their mortgages into the secondary market shortly after they were funded. In the secondary market the mortgages are combined into pools and investors buy small pieces of these mortgage pools through the financial markets. This means that mortgages compete in the money markets to attract investors. The mortgage interest rates are governed by what the money markets dictate. Just like the stock market, this can change at a moment's notice.

Although mortgage interest rates are much less stable than they used to be, we no longer have the problem of lenders not having any money to lend.

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