

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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December 20, 1991

REDACTED TEXT

REDACTED TEXT

Dear REDACTED TEXT:

Your July 30, 1991 letter to the Laguna Hills office of the State Board of Equalization has been referred to the legal staff for reply. You asked for confirmation that the publication, "Apartment Owners Review," which you produce for your client, REDACTED TEXT, qualifies as a printed sales message.

You note that the publication "is mailed and delivered directly to the U. S. Post Office by a mailing service to the recipients unsolicited and free of charge." We understand this to mean that you contract to sell the publication to REDACTED TEXT, and you deliver the publication to the mailing house rather than to REDACTED TEXT.

Sales and Use Tax Regulation 1541.5, Printed Sales Messages, provides at subdivision (b), that tax does not apply to the sale or use of printed sales messages which 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 become the owner of the printed materials...."

You sent a copy of the May 1991 issue of "Apartment Owners Review" for our review. The issue consists exclusively of advertisements and an article which publicizes services provided by REDACTED TEXT. The issue qualifies as a printed sales message for purposes of Regulation 1541.5.

Subdivision (a)(1) of Regulation 1541.5 provides that the term "printed sales messages" does not include newspapers or periodicals. The article in the "apartment Owners Review" notes

that future issues would include articles on financing, taxes, rental management and market trends. It appears that issues published subsequent to May 1991 may not qualify as printed sales messages but rather may be periodicals. Sales and Use Tax Regulation 1590, Newspapers and Periodicals, defines "periodical" at subdivision (a)(2). A copy of the regulation is enclosed.

Effective July 15, 1991, the exemption from sales and use tax for the sale or use of newspapers and periodicals was repealed. However, effective October 2, 1991, section 6362.7 was added to the Revenue and Taxation Code to exempt from tax the sale and use of newspapers and periodicals that are distributed without charge and regularly issued at average intervals not exceeding three months and any tangible personal property which becomes an ingredient or component part of such newspaper or periodical.

Assuming that "Apartment Owners Review" qualifies as a newspaper or periodical rather than a printed sales message as to issues published after May 1991, tax applied to your sales of the publication to REDACTED TEXT during the period July 15, 1991 until October 2, 1991.

The term "periodical" does not include 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. (Reg. 1590, subd. (a)(2).) If the "Apartment Owners Review" continues to qualify as a "printed sales message" rather than a "periodical," your sales of the publications continue to be exempt from tax pursuant to Regulation 1541.5 provided you meet the delivery requirements of the regulation.

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