

## SAMPLE BUSINESS TAX EXEMPTION LETTER

{Name]  
[Title]  
[Municipality]  
[Address]  
[City, State, Zip]

Re: [Specific license or account number used by municipality]

Dear [Name]:

As a licensed life agent I am exempt, as a matter of constitutional law, from payment of the above referenced license fee.

Article XIII, Section 28(f) of the California Constitution provides that the premium tax imposed on insurers by that section is "in lieu of all other taxes and licenses, state, county, and municipal, upon such insurers and their property..." The above referenced license does not fall within the exceptions to the exemption that are expressly set forth in Article XIII, Section 28.

Moreover, since the 1914 California Supreme Court decision in Hughes v. City of Los Angeles, 168 Cal. 764, 145 P. 94, appointed agents of insurance companies have qualified for the same exemption as the companies themselves.

As a result of Marsh & McLennan of California, Inc., v. City of Los Angeles, 62 Cal. App. 3d 108, 132 Cal. Rptr. 796 (1976), the courts have continued to make clear that insurance producers acting as "agents" qualify for the exemption from taxes and licenses such as the one referenced above, while producers acting as "brokers" do not.

There is much confusion among city license agencies as to the difference between an agent and a broker. Sections 1622 and 1623 of the California Insurance Code specify the respective difference between a broker and an agent. They read, in pertinent part, as follows:

### **Section 1622**

"A life agent is a person authorized, by and on behalf of a life, disability or life and disability insurer (company) to transact life, disability or life and disability insurance."

### **Section 1623**

"Insurance broker is a person who, for compensation and on behalf of another person, transacts insurance other than life with, but not on behalf of, an insurer."

As indicated, the California Insurance Code expressly excludes from the definition of "broker" those individuals who transact life and/or disability insurance on behalf of a life and/or disability insurer. Hence, an agent will not be subject to a business license tax if that agent holds an in-force notice of agency appointment and that business involves life or health insurance sales or any other sales for which an agent/insurer relationship exists.

In January, 1998, the California Department of Insurance (CDI) reaffirmed this position in a letter in response to a joint request from the Independent Brokers and Agents of the West and the Oakland city attorney. Specifically, the CDI stated that an in-force notice of agency appointment "establishes a virtually irrebuttable presumption that a producer is an agent of the insurer which filed that notice."

Based on California constitutional and relevant caselaw and recent regulatory interpretation, the city has no legal authority to tax or license me on the basis of the commission and other revenue I generate that is attributable to the business I transact in my capacity as an agent of one or more insurance companies.

For the time period in question, my business's total revenues were \$\_\_\_\_\_. Of that total, \_\_%, or \$\_\_\_\_\_, was derived from the business I transacted as an agent of one or more insurance companies and therefore those revenues are exempt.

[If the above amount is less than 100% and if you are also licensed as an insurance broker (transact insurance other than life on behalf of a client rather than a company and do not act as an agent of the insured) add the following.]

The remaining \_\_%, or \$\_\_\_\_\_ was derived from business transacted as an insurance brokers or from other sources [securities, or other non-insurance related sales] and is therefore the maximum amount on which I may be assessed.

If you have any questions please do not hesitate to contact me.

Sincerely,

[your name]

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