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September 9, 1993

Mr. [H]
[D]
XX --- ---
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Re: [No Permit Number]
[W]
Sales Tax on Meals

Dear Mr. [H]:

I am answering your letter to Assistant Chief Counsel Gary J. Jugum of July 1, 1993. Your client, [W], has requested an opinion on the application of sales tax to a wine auction it will hold to benefit the [M].

I. FACTUAL BACKGROUND

You describe the factual background as follows:

“Through its [W] Foundation [“the Foundation”], our client ... is the primary sponsor of an annual Championship. The Foundation is a non-profit charitable organization qualified under Section 501(c)(3) off the Internal Revenue Code. The championship is a fundraiser for worthy charities. Currently, the funds raised are being transferred to the [M].

“A wine auction is held in conjunction with the championship. The auctioneer tells the audience that the proceeds will go to the [M]. The program lists the normal retail value of the wines. The audience is encouraged to place bids in excess of the value of the wine as a charitable contribution. For federal and state income tax purposes, amounts paid in excess of the normal retail value are considered to be deductible charitable contributions. We believe that this also should apply for purposes of determining the sales tax.”

Apparently, no tickets were sold to gain admittance to the auction. You set forth your argument for an exemption from sales tax for the sales made at this auction as follows:

“The bidders were aware of the value of the wine. Their sole purpose in placing bids in excess of this value was to make a donation to a worthy cause. Since the retail values were stated in the program, we believe that the amounts bid in excess of the retail value were charitable contributions, not part of the sales price. Therefore, the measure of sale tax should be the retail value listed in the program rather than the winning bid.”

OPINION

A. Sales and Use Tax Generally.

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise stated, all statutory references are to the Revenue and Taxation Code.) “[I]t shall be presumed that all gross receipts are subject to tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale ...” (§ 6091.) “Exemptions from taxation must be found in the statute.” (Market St. Ry. Co. v. Cal. St. Bd. of Equal. (1953) 137 Cal.App.2d 87, 96 [290 P.2d 201].) The taxpayer has the burden of showing that he clearly comes within the exemption.” (Standard Oil Co. v. St. Bd. of Equalization (1974) 39 Cal.App.3d 765, 769 [114 Cal.Rptr. 571].)

B. Tax Consequences to [W].

There is no general exemption from sales tax for sales for the benefit of a non-profit organization. Certain restricted exemptions and partial exemptions are found in the statutes interpreted and implemented in Regulations 1570 and 1597. Since the Foundation is not any one of the organizations listed in Regulation 1597, the only exemption that could apply is found in Regulation 1570 which, in sub-division (a), sets out the four conditions that Section 6375 requires to be present before sales by charitable organizations are exempt from tax:

“(1) The organization must be formed and operated for charitable purposes and must qualify for the 'welfare exemption' provided by Section 214.

“(2) The organization must be engaged in the relief of poverty and distress.

“(3) The organization's sales or donations must be made principally as a matter of assistance to the purchasers or donees in distressed financial condition.

“(4) The property sold or donated must have been made, prepared, assembled, or manufactured by the organization.”

The Foundation is a fundraiser. It is not engaged in the relief of poverty or distress and does not make sales principally as a matter of assistance to the purchasers or donees in distressed financial condition. It thus does not qualify as a “charitable organization” for sales and use tax purposes. As a result, its sales at the wine auction are subject to tax measured by the full price at which they are sold-i.e., the auction price.

We previously sent you with a copy of Pamphlet No. 18, “Volunteer and Nonprofit Fundraising Organizations,” which contains copies of Regulations 1570 and 1597. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es

cc: Mr. [E]
[W]
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---, California XXXXX