

STATE BOARD OF EQUALIZATION

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March 7, 1996

REDACTED TEXT

Re: Contributions for Gifts
REDACTED TEXT
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Dear Mr. REDACTED TEXT:

First, let me apologize for the delay in answering your initial correspondence of December 15, 1995. That correspondence was directed to a district office which does not have a record of ever having received it. This is in response to your fax of January 26, 1996, regarding the application of sales tax to transfers of "gifts" in return for contributions.

In your letter of December 15, 1995, you state:

"REDACTED TEXT, a national not for profit charity with IRS 501(c)(3) status, is embarking in its 1996 National Campaign. Our campaign will consist of solicitation by phone, mail, direct canvass, and electronic means. California is one of our targeted states for this campaign."

"Each contributor will be offered a selection of various gifts determined by the amount of the contribution. (This practice is similar to Public Broadcast and Comic Relief fund raising efforts.) Please advise us as to any sales tax ramifications incurred in The State of California as a result of our supplying these gifts to our contributors."

From our telephone conversations we understand that the REDACTED TEXT purchases the "gifts" out-of-state ex-tax by issuing resale certificates. We assume that the "gifts" are delivered by your representatives in California to the contributors. We also understand that the "gifts" vary as to the size of the individual contribution. That is, the larger the contribution, the larger the "gift." In addition, a contributor may make a choice among a group of "gifts," once again dependent upon the size of the contribution. We note that the REDACTED TEXT holds a California seller's permit.

A short review of general sales and use tax law is appropriate and follows:

Revenue and Taxation Code section 6051 imposes a sales tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. Section 6006 defines "sale" as "(a) Any transfer of title or possession . . . of tangible personal property for a consideration," and section 6007 defines "retail sale" as "a sale for any purpose other than resale in the regular course of business." When sales tax does not apply, use tax applies to the use in California of tangible personal property purchased from a retailer for use in California. (Rev. & Tax. Code §§ 6201, 6401.) It is the retailer's responsibility to pay sales tax; however, the retailer may, by agreement, collect sales tax reimbursement from the purchaser. (Civ. Code § 1656.)

Although many nonprofit organizations have tax exempt status for federal and state income tax purposes, California law does not provide a general, blanket exemption from tax for sales and use tax purposes. This means that a retail sale of tangible personal property to or by such an organization will be subject to tax measured by the full selling price unless specifically exempt from taxation by statute. (Bus. Taxes L. Guide Annot. 390.0020 (8/24/64).)

Our long-standing interpretation of the law is that items furnished for a suggested donation are regarded as sold for purposes of sales and use tax. (Bus. Taxes L. Guide Annot. 495.0370 (10/16/72).) However, where there is a significant disparity between the amount of the contribution and the retail value of the property received, only part of the amount of the contribution will be included in the measure of tax.

Although we consider that you are making sales of the items you refer to as gifts, we view these transactions as analogous to ones where premiums are delivered with goods sold. Regulation 1670(c) provides that when a premium is delivered along with a food product for human consumption or other item, the sale of which is exempt, tax applies to the gross receipts from the sale of the premium, which will be regarded as the cost of the premium to the retailer in the absence of any evidence that the retailer is receiving a larger sum. If there is no such evidence, and if sales tax or use tax has been paid, measured by the sale price of the premiums to the retailer, no further tax is due.

We thus conclude that when (1) a person makes a contribution to the REDACTED TEXT and receives tangible personal property upon making the contribution, (2) the primary purpose of the contribution is to make a donation to support the REDACTED TEXT, and (3) there is a significant disparity between the amount of the contribution and the retail value of the property received in connection with the contribution, there is a sale of tangible personal property, but the measure of tax is the sale price of the property to the REDACTED TEXT. If the REDACTED TEXT had paid sales tax reimbursement or use tax on its purchase of the property, no further tax would be due. In this case, since the property is purchased for resale, the sales tax is due on REDACTED TEXT's purchase price of the tangible personal property when it resells it. The REDACTED TEXT may collect sales tax reimbursement from its contributors if the contract of sale so provides.

I trust that this information satisfies your requirements. If you have any further questions in regard to this matter, please do not hesitate to write again providing such additional facts as necessary.

Yours very truly,

Anthony I. Picciano
Staff Counsel

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Enclosures (3)

cc: Out-of-State District Administrator
Ms. Linda R. Cardwell (MIC:40)