

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-5589

December 14, 1989

B--- B---, Treasurer
A--- C---, Inc.
XXX --- --- Dr., Suite X
---, Ohio XXXXX

Dear Mr. B---:

Your letter of September 20, 1989 to Mr. Dudley Stidger of our Out-of-State District Office has been referred to the legal staff for reply.

As we understand it, A--- C--- [C---], Inc. is operated as a buying group. It makes large purchases of hearing aids and supplies and then sells them to its members. Participants pay an annual membership fee. With each purchase from [C---], members are required to make a forced payment to enhance working capital. You have been told that the amount subject to tax would be the total selling price including the forced payment. It is your contention that the residual forced payment element, which is always the member's money and is returned to them should they leave [C---] or should it exceed required minimums based on their participation, is inappropriate as a subject for taxation and you request a finding that the amount subject to tax is the price of the item paid to A--- C---, Inc. We disagree.

Section 6012 of the Revenue and Taxation Code defines the term "gross receipts" to mean the total amount of the sales price without any deduction on account of any of the following: "The cost of the materials used, labor or service cost, interest paid, losses or other expense," and provides that the total amount of the sale price includes "any services that are a part of the sale." Under section 6012, the tax applies to the amount paid by the purchaser as the purchase price of the merchandise. It is immaterial what the seller may do with the proceeds. A retailer cannot deduct commissions or any other selling expenses or amounts paid to anyone else rendering assistance in the operation of his business. Thus, the retailer will remain accountable for the sales tax on the entire sales price, without deduction on the amount of by such items as any forced payments by your cooperative's members. We have no authority to authorize --- --- --- --- ---.

Mr. B--- B---

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If you have further questions concerning this matter, please write this office again.

Very truly yours,

Mary C. Armstrong
Senior Tax Counsel

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