



STATE BOARD OF EQUALIZATION

May 31, 1994

Re:

Consumer Cooperative

Dear

I am answering your letter to me dated April 14, 1994. You are following up on my previous correspondence with --- and--- on its status as a consumer cooperative (Rev. & Tax. Code §§ 6011.1 and 6012.1). You request reconsideration of my previous opinion and for a new ruling based on new facts. We note that the Board staff cannot issue tax rulings; only the Board itself may do that. We can, however, give you our opinion regarding the correct application of tax to a given set of facts.

You offer the following additional facts:

"In summary, --- function is to provide advanced leadership and cost containment to the members through product standardization, cooperative purchasing, and centralized distribution. Consumable supply items and tangible personal property, which member institutions are the consumers of, are provided by the cooperative to respective member institutions at cost. Patronage fees are charged by --- to the member hospitals and health care facilities to cover wages, employee benefits, rent, insurance, accounting, utilities, and other overhead costs which are incurred by the cooperative and which had previously been incurred separately by the member health care facilities. Cost savings are obtained through cooperative purchasing of health care and hospital supply items on a collective basis, obtaining greater quantity discounts from vendors, and by centralizing warehousing and distribution functions to reduce operating costs.

"... is purchasing tangible personal property for which the member hospitals and health care facilities are the consumers of, in accordance with Revenue and Taxation Code Sections 6011.1 6012 and Sales and Use Tax Regulations 1503 and 1591. Specifically, --- purchases medicines and medical supplies, devices, and appliances for which sales tax does not apply when sold directly by the member hospital and/or health care facilities. Under this circumstance, the member is the consumer of the property and sales tax applies with respect to the sale of the property to the member itself. Furthermore, --- purchases tangible personal property for

which the members are considered consumers because of the member's method of charging for administration of the property when providing health care services. A bill is rendered for health care services, which includes the administration of supplies to the patient."

OPINION

As you note in your letter, in my previous correspondence with representatives, I concluded that the term "consumer cooperatives" as used in sections 6011.1 and 6012.1 did not include cooperatives formed by retailers on the grounds that a cooperative formed by "consumers" could not include persons who sold tangible personal property in the regular course of business. You accept that conclusion, but aver that the new facts which you present above would support reconsideration of my previous conclusions regarding --
- We agree.

As noted in my previous correspondence, the word "consumer" as used in the statutes at issue is not limited to natural persons. The legislative history indicates that the suggestion was made to so limit their scope but that it was rejected. Thus, we conclude that a "consumer cooperative" may be formed by legal, as well as natural, persons. The only proviso is that the legal persons must participate in the cooperative only as consumers. If they purchase tangible personal property through the cooperative and then resell it prior to use, the exemption is lost.

As you make clear in your letter, --- member hospitals will purchase through the cooperative tangible personal property, like, central medical supplies, of which they are the consumers, either because they are the end-purchaser or, due to their billing policies, they are deemed the consumer of items that must be administered. They will not purchase items for resale. Under such conditions, then, --- would qualify as a "consumer cooperative" under sections 6011.1 and 6012.1. This means that the member facilities will not be able to purchase anything through the cooperative for resale and may not issue resale certificates to --- for their purchases. While these conditions are observed, --- members may exclude from their gross receipts the value of initial or periodic membership fees and the value of any labor performed in lieu of, or as part of, monthly membership fees under the authority of these statutes. If, however, they attempt to issue resale certificates or resell any item purchased through the cooperative prior to use, then this exclusion will be lost.

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. Travis Fullwood (MIC:77)