STATE BOARD OF EQUALIZATION

March 11, 1968

Gentlemen:

You state in your letter of January 30, 1968 that you recently received a letter from "C", your supplier, informing you that 5 percent tax is payable on the rental of caps and gowns. These caps and gowns are manufactured by your supplier's company and are shipped directly to California.

As expressed in Section 6006(g) of the Sales and Use Tax Law, pamphlet enclosed, on or after August 1, 1965, leases of tangible personal property with certain enumerated exceptions are sales and are subject to tax. Only two of these exceptions are pertinent here; namely, Section 6006(g) (2) and Section 6006(g) (5).

Section 6006(g) (2) excludes from the definition of sale a lease of:

> "Linen supplies and similar articles when an essential part of the lease agreement is the furnishing of the recurring service of laundering or cleaning the articles."

We do not consider this exclusion as being applicable to the rental of caps and gowns since an essential part of the lease agreement is not the furnishing of a recurring laundering service.

Section 6006(g) (5) excludes from the definition of sale a lease of:

> "Tangible personal property leased in substantially the same form as acquired by the lessor... as to which the lessor... has paid sales tax reimbursement… or has paid use tax measured by the purchase price of the property."

This exclusion is not operative in your case since your lessor is leasing the caps and gowns in substantially a different form than they were acquired (i.e., it manufactures them).

Notwithstanding the fact your student store is student owned and is a nonprofit organization, it is our opinion that the lease of the caps and gowns is subject to tax measured by the rental receipts. The handling charges are also subject to tax.

We have no way of knowing when the other company received the information you quoted, but we assume it was before August 1, 1965, and was, therefore, concerned with the law relating to leases entered into or renewed before that time. If such was the case, the information received was correct since prior to that date, leases were not sales, and it did not make any difference if the tangible personal property was leased in substantially a different form than acquired. However, on or after August 1, 1965, a lease or renewal of tangible personal property which has been manufactured by a lessor is subject to tax measured by rental receipts since there has been a substantial change in form.

It appears from the limited information that the rentals of the caps and gowns by the other school in your district would also be subject to tax.

Very truly yours,

Glenn L. Rigby
Tax Counsel

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