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STATE OF CALIFORNIA

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February 11, 1993

Mr. G--- M. B---
G---, B---, & H---
XXXX --- Way, --- Floor
--- --- ---, California XXXXX

Re: [No Permit Number]
School Fund-Raisers

Dear Mr. B---:

I am answering your letter to me of December 30, 1993, which followed up on our recent correspondence and telephone conversations. You ask me to reconsider the opinion of the Legal Division as expressed in my letter to you dated November 10, 1992, that your client, a non-profit education foundation, is not "equivalent" to a P.T.A. and so does not qualify for the partial exemption from sales tax provided by Regulation 1597(e). Once again, since you did not identify the taxpayer, this letter does not constitute specific written advice to the taxpayer under Revenue and Taxation Code Section 6596. Rather, it constitutes general comments regarding the applicability of California Sales and Use Tax Law to a set of hypothetical facts.

I. FACTUAL BACKGROUND.

You base your contention that your client is "equivalent" to a P.T.A. on the following facts:

"The foundation is not a 'professional fund-raising organization,' but rather is comprised solely of volunteer members. With one exception, all board members are parents who have children that attend schools supported by the foundation.

"The foundation provides support to all schools within the school district. The actual disbursement of funds is based on requests submitted by the teachers, administrators, and P.T.A's. Accordingly, the foundation is responsive to the needs of all students in the district.

"While we admit that the foundation is not chartered by a particular school, it is supported and endorsed by the schools, the school district, the school board, and the superintendent...."

II. OPINION

As I noted in my letter, Regulation 1597(e) interprets and implements Revenue and Taxation Code Section 6370 which provides that P.T.A'S and "equivalent organizations performing the same type of service" are the consumers and not the retailers of tangible personal property which they sell if the profits are used exclusively in furtherance of the objectives of the organization. This means that they do not pay tax on the sales they make to raise money for the organization but tax may apply to their purchases of the same property.

We have previously determined that, in order, to determine whether a particular organization is equivalent to the P.T.A, and provides the same type of service to the school, we must compare objectives and services offered by the requesting organization to those offered by the P.T.A. Pertinent excerpts from the California P.T.A. by-laws follow:

Article II, Section 1, lists the objectives of the P.T.A. as follows:

"a. To promote the welfare of children and youth in home, school, church and community.

"b. To raise the standards of home life.

"c. To secure adequate laws for the care and protection of children and youth.

"d. To bring into closer relation the home and school, that parents and teachers may cooperate intelligently in the education of children and youth.

"e. To develop between educators and the general public such united efforts as will secure for all children and youth the highest advantages in physical, mental, social, and spiritual education."

Article II, Section 2, indicates that these objectives will be promoted by the following:

"The objects of the National PTA and the California State PTA are promoted though an educational program directed towards parents, teachers, and the general public, are developed through conferences, committees, projects and programs; and are governed and qualified by the basic policies set forth in Article III."

Insofar as is pertinent here, Article III provides as follows:

"a. The organization shall be noncommercial, nonsectarian, and nonpartisan.

"d. The organization shall work with the schools to provide quality education for all children and youth and shall seek to participate in the decision-making process establishing school policy, recognizing that the legal responsibility to make decisions has been delegated by the people to boards of education."

As I noted in my previous letter, in our view it is not necessary that a particular organization have identical objectives and services as set forth in the P.T.A. charter. It should, however, be similar in objective and purpose. At the very least it should be concerned with the welfare of all students and include parents. Its functions should include some coordinated promotion of educational programs or projects among parents, students, school authorities and the general public and go beyond mere fund-raising.

We stand corrected in our assumption that your client was likely a professional fund-raising organization as you indicate that your client's board members are, with one exception, parents of children who go to schools in the district. However, the only service you indicate that it performs is to raise funds on behalf of the schools in the district. Indeed, you state that some of the funds are disbursed at the request of the P.T.A.'s. The fact that there are already P.T.A.'s in the district indicates that they perform the wider functions of a P.T.A., while your client does the fund-raising. You state that in the modern environment of funding cut-backs, P.T.A.'s are forced to concentrate on fund-raising. Be that as it may, the chartered purpose of a P.T.A. is much wider than fund-raising, and the P.T.A.'s still perform such purposes. We further note that your client does not appear to be chartered by either the district or its constituent schools. We thus remain of the opinion that your client's narrow purpose and objective (fund-raising for the schools in the district) are not sufficiently similar to the ongoing purposes and objectives of a P.T.A. which are broader than that. Accordingly, we conclude that your client is not a P.T.A. "equivalent organization" within the meaning of Regulation 1597(e) with the result that its gross receipts from its sales of tangible personal property at its impending auction will be subject to tax.

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