


STATE BOARD OF EQUALIZATION

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May 7, 1996

Ms. J--- J---
 L--- C--- Winery
 XXXX --- Road
 ---, CA XXXXX

**Re: E--- D--- W--- A---
 SR -- XX-XXXXXX**

Dear Ms. J---:

This is in response to your letter dated March 14, 1996 regarding the application of tax to sales of tickets entitling the purchaser to food and wine during events held at certain wineries located in --- --- County. You state:

“Every year on two consecutive weekends, we have one annual fund raising event to raise money to promote our winery area. People buy a ‘Passport’ ticket which entitles them to visit all the wineries for a week-end. Each winery features special wine and food pairings and activities related to learning about wine. All food and wine for tasting and other costs for the event are donated by the wineries, but each winery is given an amount from the association to partially cover their costs. ‘Passport’ ticket holders do not pay for anything except their ticket.”

You ask whether the association is obligated to pay sales tax on its ticket sales.

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) “Gross receipts” means the total amount of the sale, valued in money, whether received in money or otherwise, and it includes charges for any services that are a part of the sale. (Rev. & Tax. Code § 6012.) A retailer may collect reimbursement from its customers for its sales tax liability if its contract of sale provides for such reimbursement. (Civ. Code § 1656.1.)

Although you indicate that the events are fundraisers, it is not clear whether the E--- D--- W--- A--- (“Association) is a nonprofit organization. While many organizations enjoy tax-exempt status for federal and state income tax purposes, California law does not provide to such organizations 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 an organization, even if the organization is non-profit, will be subject to tax measured by the full selling price unless the sale is specifically exempt from taxation by statute. (Business Taxes Law Guide Annotation 390.0020 (8/24/64).)

Revenue and Taxation Code section 6359 provides that the sales of food products for human consumption are exempt from tax under certain circumstances. However, wine is not considered a food product the sales of which are exempt from tax, and although you have not indicated what type of food is served, where food is served with wine, it might be considered part of a meal subject to tax. (Rev. & Tax. Code § 6359, Regs. 1602, 1603; see BTLG Ann. 550.0160 (9/29/76).)

It appears that in the circumstances about which you inquire, the Association provides visitors with food and wine that it has, in effect, purchased from the wineries, and it also allows the visitors to take part in other activities, all in exchange for “passport” tickets the visitors have purchased from the Association. You have not indicated the amount you charge visitors for each ticket. Business Taxes Law Guide Annotation 495.0370 (10/16/72) explains that tangible personal property provided for a suggested minimum donation is regarded as being sold for sales and use tax purposes. In the situation on which that annotation is based, we concluded that the measure of tax would be the lesser of the amount given or the suggested minimum donation. This result would be unchanged even if that suggested minimum donation was deductible for income tax purposes.

It appears that in your circumstances, the Association is the retailer of the food and wine it serves at its events, and it owes sales tax measured by the sales price of the ticket. It may charge the visitors for reimbursement of the amount of its sales tax liability if the contract of sale provides for such reimbursement.

If you have further questions, please feel free to write again.

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:cl

cc: --- District Administrator