

M e m o r a n d u m**550.0106**

To: Mr. Jim Speed
San Francisco Auditing

Date: May 2, 1988

From: David Levine
Tax Counsel

Subject: K---, Inc.
SR -- XX-XXXXXX

This is in response to your memorandum dated February 29, 1988 regarding taxable sales of food and beverages at events raising funds for K---. Attendees of these events pay an admission charge. K--- arranges for donors who are vendors of various food products to bring in products for attendees to sample and employees to serve the products. Although the donors are not charged for their space at the event, the donor forms supplied by K--- and completed by the donors state that the donors receive print and broadcast promotion in exchange for their donations. K--- states that its volunteers take money at the door, assist with cleanup, and provide relief help for the donors, but that it is actually the donors who present and serve their products. K--- contends that it requires every donor to provide a minimum of four people to service that donor's display. You note, however, that not all donors provide servers. Rather, servers were primarily K--- volunteers and outside caterers who donated their services at the events. The auditor's examination of records indicated that only one person had to be present for each donor, and that three K--- volunteers assisted in serving at each booth in most cases.

K--- argues that it never has title to or possession of any of the products consumed and that it makes no sales. You note the application of Regulation 1603 as summarized in the Board's Notice to Nonprofit Groups, BT-1388.

Initially, we note that it is clear that in these transactions a sale of food and beverages is being made to the attendees, the question being whether the seller is K--- or the donor. This is somewhat analogous to the situation of the annual auctions conducted by K---. When a donor transfers physical possession of property to K---, we regard K--- as the seller of that property when the purchaser takes possession from K---. On the other hand, when a donor provides K--- with a gift certificate that the purchaser uses to purchase property from the donor, we regard the donor as the seller.

In this case, if the donors were regarded as the sellers of the food and beverages, we would regard as the consideration they received for their sale to be the print and broadcast promotion provided to them and the space provided at the event for them to promote their products. Based on the facts you present, however, it appears that K--- is actually the seller.

Tax Tip Pamphlet No. 18, Volunteer and Nonprofit Fund Raising Organizations, considers similar facts at page 6. When an organization running a fund raiser contracts with a vendor to supply and serve the food at a certain charge, the vendor would be the seller and would owe sales tax measured by its charge to the organization. On the other hand, if the organization contracts with a vendor to prepare food and that food is served by the organization, the organization is regarded as the seller of the food. Although K--- asserts that it requires a minimum of four people to service each vendor's display, you state that the servers were primarily K--- volunteers. Based on this statement, we conclude that K--- is the seller at these events.

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

DHL:jb