

**STATE BOARD OF EQUALIZATION**

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January 24, 1984

Mr. L--- B---, President
I--- C---, Inc.
XXXX --- Street
--- ---, CA XXXXX

SR – XX-XXXXXX

Dear Mr. B---:

This is written in response to your letter of October 31, 1983. You asked that we render our opinion as to the application of the Sales and Use Tax Law to the operations of I--- C---(I---). At the outset it should be stated that, we assume for purposes of this letter the cruises in question occur within California territorial waters.

Your letter indicated the following business operations conducted for your customers: day cruise, priced at \$6.50 per person, includes a cruise on your boat with one complimentary beverage; dinner cruise, priced at \$29.50 per person, includes a cruise, dinner, and customers choice of beverages in unlimited quantity; sales to customers of tangible personal property through a souvenir concession on board the boat; sales to customers of beverages at the boat's bar, and; complimentary day and dinner cruises for travel agencies and other customers.

Based on the foregoing description, you asked the following questions, our comments with respect to which will follow each question.

1. What is the sales tax status of the cruise itself?

Comments

There is no sales tax due with respect to amounts received which are allocable to the price of the cruise since such amounts are for services rendered, not for sales of tangible personal property.

2. What is the sales tax status of the complimentary beverage on the day cruise? If it is taxable, should the tax be computed at our cost, or at a marked up value, (i.e., the normal price charged at our bar)?

Comments

The complimentary beverages are considered tangible personal property used incidentally in providing the day cruise service and I--- would be deemed the consumer of those beverages (see Reg. 1501, copy enclosed). As a consumer of the beverages, tax would apply either upon acquisition by I--- of the beverages or, if the beverages were purchased by it ex-tax for resale, upon use. Assuming the beverages were purchased ex-tax for resale, I--- should compute and pay tax based upon its cost.

3. What is the sales tax status of the meal and beverages served on our dinner cruise? Again, should the tax, if any, be computed on our cost, or at a marked-up cost?

Comments

As indicated above, there is no tax due with respect to the portion of the charges allocable to the meal and beverage portion of the total charge (see Reg. 1603, copy enclosed). How the tax is measured depends on the nature of your agreement with the customers. Regulation 1700, copy enclosed, explains the proper method of computing and paying the tax. We suggest you consult that regulation to determine how the tax applies to your specific type of arrangement. We are also enclosing a copy of board pamphlet No. 22, entitled "The Dining and Beverage Industry" which should be of assistance in clarifying other questions which may arise.

4. What is the sales tax status of our complimentary cruises, both day cruises and dinner cruises, for sales promotion?

The only tax due from I--- with respect to the complimentary cruises would be tax, measured by cost, of the alcoholic and carbonated beverages which I--- serves to the customers. This conclusion assumes that such beverages were purchased by I--- ex-tax for resale. If the beverages were purchased by I--- tax paid, there would be no tax due with respect to them. Likewise, food items served to the customers are deemed consumed by I--- and, accordingly, are exempt from tax as "food products" (Rev. & Tax. Code §6359).

5. What is the sales tax status of the beverage sales during the day cruise?

Comments

These sales are deemed taxable retail sales of tangible personal property. As indicated in our comments with respect to question 3, how the tax is measured depends on I---'s agreement with the customer (see Regulation 1700).

6. What is the sales tax status of our souvenir concession?

Comments

See comments under question (5) above.

Very truly yours,

Les Sorensen
Tax Counsel

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Enclosures