

M e m o r a n d u m

To : Mr. Ramon J. Hirsig
Executive Director, MIC:73

Date: January 18, 2008

From : Kristine Cazadd, Chief Counsel
Legal Department, MIC:83

Subject : Regulation 1570, *Charitable Organizations*
Chief Counsel's Rulemaking Calendar
Board Meeting—February 1, 2008

Assembly Bill 538 (Ch. 317, Stat. of 2007) amended Revenue and Taxation Code (RTC) section 6375.5 to expand the sales and use tax exemption for new children's clothing sold to a nonprofit organization for its distribution without charge. For the period from January 1, 2008, through December 31, 2013, the exemption applies to new children's clothing sold to nonprofit organizations qualifying for exempt status under RTC section 23701f, as well as to organizations qualifying for exempt status under RTC section 23701d, and the exemption applies to clothing purchased for individuals under 18 years of age, and not just to clothing purchased for elementary schoolchildren. To incorporate the provisions of RTC section 6375.5, we request your approval to place proposed revisions to Sales and Use Tax Regulation 1570 on the Chief Counsel's Rulemaking Calendar on February 1, 2008, for Board authorization to amend the regulation under Rule 100, without the normal notice and public hearing process. This change is appropriate for processing under Rule 100 because it incorporates statutory provisions into the regulation and makes the regulation consistent with a statutory change.

Attached is the strikeout and underlined version of the regulation.

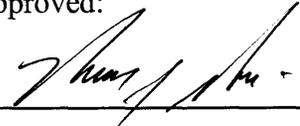
If you have any questions regarding this request, please let me know or contact Ms. Lisa Andrews at 322-5989.

Recommendation by:



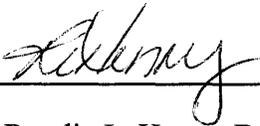
Kristine Cazadd, Chief Counsel

Approved:



Ramon J. Hirsig, Executive Director

Approved:



Randie L. Henry, Deputy Director
Sales and Use Tax Department

BOARD APPROVED

At the _____ Board Meeting

Diane Olson, Chief
Board Proceedings Division

Attachments

cc (all with attachments):

- Ms. Randie L. Henry (MIC 43)
- Mr. Robert Lambert (MIC 82)
- Ms. Diane Olson (MIC 80)
- Mr. Tim Treichelt (MIC 82)
- Ms. Windie Scott (MIC 85)
- Mr. Jeffrey L. McGuire (MIC 92)
- Mr. Geoffrey E. Lyle (MIC 50)
- Ms. Leila Hellmuth (MIC 50)
- Ms. Lisa Andrews (MIC 50)

Proposed Amendments to Regulation 1570

Regulation 1570. CHARITABLE ORGANIZATIONS.

Reference: Sections 6371, 6375, 6375.5, 6408, and 6409, 23701d, and 23701f, Revenue and Taxation Code.

(a) DEFINITION. For purposes of this regulation, the term "charitable organization" means and includes any organization which meets all of the following conditions:

- (1) The organization must be formed and operated for charitable purposes and must qualify for the "welfare exemption" from property taxation provided by Section 214 of the Revenue and Taxation Code.
- (2) The organization must be engaged in the relief of poverty and distress.
- (3) The organization's sales or donations must be made principally as a matter of assistance to purchasers or donees in distressed financial condition.
- (4) The property sold or donated must have been made, prepared, assembled or manufactured by the organization.

(A) The welfare exemption referred to in condition (1) is available to property owned and operated by a charitable organization under certain conditions. Among them is the requirement that the property be used in the actual operation of a charitable activity. Property used merely to raise funds is not used in a charitable activity even though the funds will be devoted to a charitable purpose. An example of a retail location being engaged in a charitable activity is a store employing handicapped persons as store personnel which devotes its profits to the store operation and an associated closed workshop for the handicapped.

(B) In order to receive the sales tax exemption it is necessary for the organization to receive the welfare exemption on the retail location for which the seller's permit is held. The welfare exemption must be claimed annually by March 15 with the county assessor on forms provided for this purpose. If the organization does not own the store premises, it must receive the welfare exemption on its personal property, i.e., inventory, furnishings, and fixtures.

(C) Conditions (2) and (3) are fulfilled if the primary purpose of the organization is to relieve poverty and distress and to aid purchasers and donees by selling its property at reduced prices or donating its property so as to be of real assistance to the purchasers and donees. Incidental sales to persons other than indigents will not preclude the organization from receiving the benefits of Revenue and Taxation Code section 6375.

(D) Condition (4) is fulfilled when the property is picked up at various locations and brought together (assembled) at one or more locations for purposes of sale or donation, even though nothing further remains to be done to the property to place it in saleable condition. Property is deemed "prepared" when it is made ready for sale or donation by such processes as cleaning, repairing, or reconditioning.

(b) SALES BY CHARITABLE ORGANIZATIONS. Sales by a charitable organization are exempt from the sales tax and the purchaser is exempt from the use tax provided all of the conditions of paragraph (a) above are met.

(c) SALES TO CHARITABLE ORGANIZATIONS.

(1) Effective January 1, 1990, neither the sales tax nor the use tax apply to tangible personal property purchased by a charitable organization for the purpose of donation by the organization provided all of the conditions of paragraph (a) above are met. Tax applies, however, to sales to the organization of supplies (such as tools and office supplies) and other articles not otherwise exempt.

(2) Except as provided in (c)(3), tax does not apply to the gross receipts from the sale of, and the storage, use, or other consumption in this state of new children's clothing that is sold to a nonprofit organization for its distribution without charge to elementary schoolchildren. For purposes of this subdivision, "nonprofit organization" means an organization that meets all of the following requirements:

- (A) Is organized and operated for charitable purposes.
- (B) Has exempt status under Revenue and Taxation Code section 23701d.
- (C) Is engaged in the relief of poverty and distress.

Proposed Amendments to Regulation 1570

_____ (D) Distributes new children’s clothing principally as a matter of assistance to recipients in distressed financial conditions.

_____ (3) From January 1, 2008, through December 31, 2013, tax does not apply to the gross receipts from the sale of, and the storage, use, or other consumption in this state of new children’s clothing that is sold to a nonprofit organization for its distribution without charge to individuals under 18 years of age. For purposes of this subdivision, “nonprofit organization” means an organization which meets all of the following criteria:

_____ (A) Is organized and operated for charitable purposes.

_____ (B) Has exempt status under Revenue and Taxation Code section 23701d or 23701f.

_____ (C) Furnishes new children’s clothing principally as a matter of assistance to recipients in distressed financial conditions.

(24) Any seller claiming an exemption from the sales tax for property sold to a charitable organization for subsequent donation may obtain from the organization and retain an exemption certificate in accordance with the requirements of section 1667, Title 18, California Code of Regulations (Regulation 1667, “Exemption Certificates”).

(d) SELLER’S PERMITS REQUIRED. Organizations qualifying for exemption under section 6375 are retailers and are required to hold seller’s permits even though all of their sales are exempt from tax.

(e) MEDICAL HEALTH INFORMATION LITERATURE. Use tax does not apply to the storage, use, or other consumption in this state of medical health information literature purchased by any organization formed and operated for charitable purposes which qualifies for the exemption provided by section 214, the “welfare exemption,” which is engaged in the dissemination of medical health information; provided that such purchases are made from a national office, or another branch of that national office, of the same organization.

(f) HEALTH AND SAFETY MATERIALS. Use tax does not apply to the storage, use, or other consumption in this state of health and safety educational materials and insignia routinely sold in connection with health and safety and first aid classes, purchased or sold by any national organization formed and operated for charitable purposes which qualifies for the exemption provided by Section 214, the “welfare exemption,” which is engaged in the dissemination of health and safety information; provided that such purchases are made from a national office or another branch or chapter of such office of the same organization.

(g) MEDICAL IDENTIFICATION TAGS. Tax does not apply to the sale of, or the storage, use, or other consumption of, medical identification tags furnished by an organization exempt from taxes under Revenue and Taxation Code Section 23701. The term “medical identification tags” includes any tag worn by a person for the purpose of alerting other persons that the wearer of such tag has a medical disability or allergic reaction to certain treatments.