State of California | Board of Equalization

Memorandum

To : Ms. Kristine Cazadd
Executive Director, MIC: 73

Date: October 20, 2011

From : Randy Ferris, Acting Chief Counsel
Legal Department, MIC: 83

Subject : **Board Meeting, November 15-17, 2011**
Item J - Chief Counsel's Rulemaking Calendar
Regulation 1570, *Charitable Organizations*

Regulation 1570, *Charitable Organizations*, provides for a sales and use tax exemption for sales of tangible personal property by a charitable organization, provided four specific requirements are met. One of the four requirements provides that the charitable 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. The regulation provides clarifying language regarding the requirement that the organization must annually claim by March 15 the welfare exemption with the county assessor for the retail location for which the seller's permit is held. The regulation also provides that if the organization does not own the store premises, it must receive the welfare exemption on its personal property, such as inventory, furnishings, and fixtures.

Senate Bill 2086 (Chapter 214, Statutes of 2002) changed the annual filing date for organizations to claim the welfare exemption from March 15 to February 15. Additionally, Revenue and Taxation Code section 219, as added by Chapter 411 of the Statutes of 1980, provides an exemption from property tax for business inventories. These statutory changes are not currently reflected in the current language of Regulation 1570. Proposed revisions would amend subdivision (a)(4)(B) by removing reference to the date on which the annual filing must be made and also removing the reference to inventory. Removal of the date, rather than inserting the current statutory date, would preclude the need to further amend the regulation should the date change again in the future.

To incorporate the statutory provisions, we request your approval to place proposed revisions to Sales and Use Tax Regulation 1570 on the Chief Counsel's Rulemaking Calendar on November 15-17, 2011, for Board authorization to amend the regulations under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process. The revisions are appropriate for processing under Rule 100 because they make the regulations consistent with the statutory change and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

Attached is a strikeout and underlined version of the regulation illustrating the proposed revisions.

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 916-323-3091.

Recommendation by:

Randy Ferris, Acting Chief Counsel

Approved:

Kristine Cazadd, Executive Director

Approved:

Jeffrey L. McGuire, Deputy Director
Sales and Use Tax Department

BOARD APPROVED
At the 11-15-2011 Board Meeting

Joann Richmond
for Diane Olson, Chief
Board Proceedings Division

Attachments

cc: Mr. Jeffrey L. McGuire (MIC 43)
Ms. Diane Olson (MIC 80)
Ms. Christine Bisauta (MIC 82)
Mr. Bradley M. Heller (MIC 82)
Ms. Susanne Buehler (MIC 92)
Mr. Rich Reger (MIC 40)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Leila Hellmuth (MIC 50)
Mr. Bradley Miller (MIC 92)

Revised Text of Proposed Amendments to California Code of Regulations, Title 18, Section 1570

Regulation 1570. CHARITABLE ORGANIZATIONS.

Reference: Sections 6371, 6375, 6375.5, 6408, 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.

(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.

(4) 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.