

Memorandum

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

Date: January 7, 2010

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



Subject : Regulation 1597, *Property Transferred or Sold by Certain Nonprofit Organizations*
Chief Counsel's Rulemaking Calendar
Board Meeting—January 27, 2010

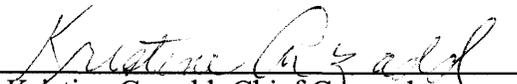
Statutes 2009, chapter 538 (Assem. Bill No. 1486 (2009-10 Reg. Sess.)), section 1, added Revenue and Taxation Code section 6018.9 to provide that, until January 1, 2015, an organization described in Section 501(c) of the Internal Revenue Code is a consumer, and not a retailer, of tangible personal property transferred to its members, as defined, if certain conditions are met. To incorporate the new statutory provisions, we request your approval to place proposed revisions to Sales and Use Tax Regulation 1597 on the Chief Counsel's Rulemaking Calendar for January 27, 2010, for Board authorization to amend the regulation under Rule 100, without the normal notice and public hearing process. The revisions add new subdivision (i) to Regulation 1597 and add citations to Revenue and Taxation Code section 6018.9 to Regulation 1597, subdivision (a), and Regulation 1597's reference note. The changes are appropriate for processing under Rule 100 because they make the regulation consistent with a statutory change.

Attached is the Statement of Explanation, which includes a detailed description of the proposed changes to Regulation 1597 and a strikeout and underlined version of the regulation.

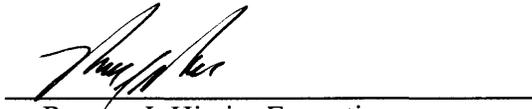
If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 324-2657.

Recommendation by:

Approved:



Kristine Cazadd, Chief Counsel
Director

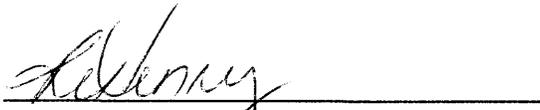


Ramon J. Hirsig, Executive

Approved:

BOARD APPROVED

At the _____ Board Meeting



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

Diane Olson, Chief
Board Proceedings Division

Attachments

- cc: Ms. Randie L. Henry (MIC 43)
- Ms. Diane Olson (MIC 80)
- Mr. Randy Ferris (MIC 82)
- Mr. Bradley M. Heller (MIC 82)
- Mr. Jeffrey L. McGuire (MIC 92)
- Mr. Geoffrey E. Lyle (MIC 50)
- Ms. Leila Hellmuth (MIC 50)
- Ms. Cecilia Watkins (MIC 50)

Regulation 1597. PROPERTY TRANSFERRED OR SOLD BY CERTAIN NONPROFIT ORGANIZATIONS

Reference: Sections [6018.9](#), 6359.3, 6360, 6361, 6361.1, and 6370, Revenue and Taxation Code.

(a) IN GENERAL. Sections [6018.9](#), 6359.3, 6360, 6361, 6361.1 and 6370 of the Revenue and Taxation Code provide that certain organizations are consumers and not retailers of specified kinds of tangible personal property under certain conditions. The subsections which follow describe the organizations and the kind of tangible personal property involved.

(b) FLAGS SOLD BY NONPROFIT VETERANS' ORGANIZATIONS. Any nonprofit veterans' organization is a consumer of and shall not be considered a retailer of flags of the United States which it sells where the profits are used solely and exclusively in furtherance of the purpose of the organization.

(c) PRISONERS OF WAR BRACELETS TRANSFERRED BY CHARITABLE ORGANIZATIONS. Any charitable organization qualifying for the welfare exemption from property taxation under Section 214 of the Revenue and Taxation Code is the consumer of bracelets designed to commemorate American prisoners of war, which it distributes, whether or not a contribution is made to such organization, where the profits are used solely and exclusively in furtherance of the purposes of such organization.

(d) HANDCRAFTED OR ARTISTIC TANGIBLE PERSONAL PROPERTY SOLD BY CERTAIN QUALIFIED ORGANIZATIONS. Any organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C.A.); which, as its primary purpose, provides services to individuals with developmental disabilities or, effective August 3, 1995, to children with severe emotional disturbances, and which does not discriminate on the basis of race, sex, nationality, or religion is the consumer and not the retailer of any tangible personal property sold by them if all of the following conditions are met:

(1) The tangible personal property is of a handcrafted or artistic nature and is designed, created, or made by individuals with developmental disabilities or, effective August 3, 1995, by children with severe emotional disturbances, who are members of, or receive services from, the qualified organization.

(2) The price of each item of tangible personal property sold does not exceed twenty dollars (\$20), or ten dollars (\$10) if sold prior to August 3, 1995.

(3) The qualified organization's sales are made on an irregular or intermittent basis.

(4) The qualified organization's profits from the sales are used exclusively in furtherance of the purposes of the organization.

(e) FOOD PRODUCTS, NONALCOHOLIC BEVERAGES AND OTHER TANGIBLE PERSONAL PROPERTY SOLD BY NONPROFIT YOUTH ORGANIZATIONS.

(1) A qualified youth organization is the consumer and not the retailer of food products, nonalcoholic beverages, and tangible personal property created by members of the organization which are sold on an irregular or intermittent basis provided the profits from such sales are used solely and exclusively in the furtherance of the purpose of the organization.

(A) "Qualified youth organization" means and includes:

1. any nonprofit organization which qualifies for tax-exempt status under Section 501(c) of the Internal Revenue Code (26 U. S. C. A.); which provides a supervised program of competitive sports for youth or promotes good citizenship in youth as its primary purpose; and which does not discriminate on the basis of race, sex, nationality, or religion, or

2. any youth group or club sponsored by or affiliated with a qualified educational institution, including but not limited to any student activity group, e.g., debating team, swimming team, band, or choir.

(B) “Qualified educational institution” means and includes:

1. any public elementary, secondary, or vocation-technical school which provides education for either kindergarten; grades 1 through 12, inclusive; or college or university undergraduate programs, or any part thereof, or

2. any nonprofit private school which provides education programs for either kindergarten; grades 1 through 12, inclusive; or college or university undergraduate programs, or any part thereof. Nonprofit private school educational programs must meet the requirements of the State Department of Education and must satisfy the requirements of state and local laws governing private educational institutions in effect on January 1, 1990. The term does not include a nonprofit private school which otherwise qualifies but which discriminates on the basis of race, sex, nationality, or religion. For example, a youth group sponsored by a private school which has enrollment open only to females is not a “qualified youth organization.”

(C) “Irregular or intermittent” is defined to mean sales made at particular events, such as fairs, galas, parades, scout-a-ramas, games, and similar activities, which are not conducted on a regularly scheduled basis. Sales made at refreshment stands or booths at scheduled events of organized youth sports leagues are considered made on an “irregular or intermittent” basis; however, sales made in storefront or mobile retail outlets which ordinarily require local business licenses do not qualify.

(2) The following organizations are “qualified youth organizations” and are consumers, not retailers, of tangible personal property under the circumstances described in paragraph (e)(1):

Little League, Bobby Sox, Boy Scouts, Cub Scouts, Girl Scouts, Campfire, Inc., formerly Campfire Girls, Young Men’s Christian Association, Young Women’s Christian Association, Future Farmers of America, Future Homemakers of America, 4-H Clubs, Distributive Education Clubs of America, Future Business Leaders of America, Vocational Industrial Clubs of America, Collegiate Young Farmers, Boys’ Clubs, Girls’ Clubs, Special Olympics, Inc., American Youth Soccer Organization, California Youth Soccer Association, North, California Youth Soccer Association, South, and Pop Warner Football.

(f) TANGIBLE PERSONAL PROPERTY SOLD BY CERTAIN NONPROFIT ORGANIZATIONS. The following organizations are consumers and not retailers of any tangible personal property sold by them if the profits from such sales are used exclusively in the furtherance of the purposes of the organization:

(1) Nonprofit parent-teacher associations chartered by the California Congress of Parents, Teachers, and Students, Incorporated, and equivalent organizations performing the same type of service for public or private schools and authorized to operate within the school by the governing authority of the school.

(2) Nonprofit associations commonly called Friends of the Library, and equivalent organizations performing auxiliary services to any library district, municipal library, or county library in the state, which are authorized to operate within the library by the governing authority of the library.

(3) Nonprofit parent cooperative nursery schools.

(g) RESALE CERTIFICATES: OBLIGATIONS OF PERSONS WHO SELL TO CONSUMERS. An organization classed as a consumer under this regulation may not give a resale certificate with respect to the property it transfers.

All persons, other than organizations classed as consumers, who make sales of tangible personal property not otherwise exempt, should report tax on their sales unless the purchasers furnish resale certificates which can be accepted in good faith.

It will be presumed that all sales of tangible personal property not otherwise exempt, by organizations not classed as consumers, for delivery in this state to purchasers who do not furnish resale certificates which the seller accepts in good faith are subject to sales tax or that the seller is obligated to collect use tax from the purchasers.

(h) TAXABLE SALES OF TANGIBLE PERSONAL PROPERTY BY OR THROUGH NONPROFIT ORGANIZATIONS. A nonprofit organization is treated as a consumer of tangible personal property it may sell under circumstances described in subdivisions (d), (e) and (f) of this regulation. In other cases, a nonprofit organization is

regarded as a retailer of property it sells to consumers, or it is regarded as an agent of the companies which furnish the property to it for delivery to consumers.

When a nonprofit organization solicits orders, collects payments, and distributes tangible personal property for a supplier, it is considered to be the agent of that supplier. Accordingly, the supplier, not the organization, is the retailer of the merchandise sold. This is true unless documentation establishes that the nonprofit organization is buying and selling for its own account. The nonprofit organization is presumed to be buying and selling on its own account if all of the following factors are present: 1) the organization solicits the orders from the public in its own name; 2) the organization collects the sale price from the customer in its own name; 3) the organization is responsible for and pays the supplier for the merchandise; and 4) the contract between the organization and the supplier clearly identifies the fact the organization will purchase and resell the products to its customers. If it is selling for its own account, the nonprofit organization will be required to obtain a permit and will be considered the retailer, unless the supplier has been classified by the Board as a retailer under Revenue and Taxation Code Section 6015 or the nonprofit organization is classified under subdivisions (d), (e) and (f) of this regulation.

If the supplier is a 6015 retailer, the supplier must pay the tax and the organization does not need a seller's permit. The measure of tax is the amount charged to the consumer. When this price is unknown by the supplier, tax will apply to the suggested retail selling price. If the nonprofit organization is classified as a consumer under subdivisions (d), (e) and (f) of this regulation, the supplier will calculate tax measured by the selling price to the nonprofit organization.

(i) TRANSFER OF TANGIBLE PERSONAL PROPERTY TO MEMBERS. From April 1, 2010, until January 1, 2015, an organization described under Section 501(c) of the Internal Revenue Code (26 U.S.C.A.) is the consumer of tangible personal property transferred to its members, if the following requirements are met:

(1) The tangible personal property bears a logo or other identifying mark of the organization and is a promotional item or other item commonly associated with use by a member to demonstrate the member's association with, or membership in, the organization.

(2) The cost to the member of the organization for the acquisition of the tangible personal property is not more than the cost to the nonprofit organization to obtain and transfer to the member the tangible personal property, including any applicable sales or use tax paid by the nonprofit organization.

(3) Reasonable steps are taken by the organization to ensure that no member is allowed to acquire more than 30 identical items of tangible personal property or to resell the items to another person.

(4) The tangible personal property is not distributed for purposes of organized political campaigning or issue advocacy.

CHANGES WITHOUT REGULATORY EFFECT UNDER
CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Changes to Title 18. Public Revenue

Regulation 1597, *Property Transferred or Sold by Certain Nonprofit Organizations*

A. Factual Basis

Statutes 2009, chapter 538 (Assem. Bill No. 1486 (2009-10 Reg. Sess.)), section 1, added Revenue and Taxation Code section 6018.9, to “provide that a membership organization, as described in Section 501(c) of the Internal Revenue Code, is the consumer, and not a retailer, of tangible personal property meeting certain requirements that it provides to its members, so that the retail sale subject to tax is the sale of tangible personal property to the membership organization,” until January 1, 2015. (Legislative Counsel Digest.) Section 6018.9 expressly provides that:

6018.9.

(a) An organization described in Section 501(c) of the Internal Revenue Code is a consumer of, and shall not be considered a retailer within the provisions of this part for purposes of any transfer of, tangible personal property to its members, as defined in Section 5056 of the Corporations Code, if the following requirements are met:

(1) The tangible personal property bears a logo or other identifying mark of the organization and is a promotional item or other item commonly associated with use by a member to demonstrate the member's association with, or membership in, the organization.

(2) The cost to the member of the organization for the acquisition of the tangible personal property is not more than the cost to the nonprofit organization to obtain and transfer to the member the tangible personal property, including any applicable sales or use tax paid by the nonprofit organization.

(3) Reasonable steps are taken by the organization to ensure that no member is allowed to acquire more than 30 identical items of tangible personal property or to resell the items to another person.

(4) The tangible personal property is not distributed for purposes of organized political campaigning or issue advocacy.

(b) This section shall remain in effect only until January 1, 2015, and as of that date is repealed.

Therefore, the State Board of Equalization (Board) proposes to add subdivision (i) to California Code of Regulation, title 18, section (Regulation) 1597, *Property Transferred or Sold by Certain Nonprofit Organizations*, to read as follows pursuant to California Code of Regulations, title 1, section (Rule) 100, to conform to the current provisions of Revenue and Taxation Code section

6018.9. In addition, the Board proposes to add citations to Revenue and Taxation Code section 6018.9 to Regulation 1597, subdivision (a), and Regulation 1597's reference note.

The changes to Regulation 1597 are appropriate for processing under Rule 100 because the changes are without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the changes are necessary to bring Regulation 1597 into conformity with the current provisions of Revenue and Taxation Code section 6018.9.

B. Proposed Amendments

The Board proposes to amend Regulation 1597 to read as follows:

Regulation 1597. Property Transferred or Sold by Certain Nonprofit Organizations.

(a) In General. Sections 6018.9, 6359.3, 6360, 6361, 6361.1 and 6370 of the Revenue and Taxation Code provide that certain organizations are consumers and not retailers of specified kinds of tangible personal property under certain conditions. The subsections which follow describe the organizations and the kind of tangible personal property involved.

(b) Flags Sold by Nonprofit Veterans' Organizations. . . . (unchanged).

(c) Prisoners of War Bracelets Transferred by Charitable Organizations. . . . (unchanged).

(d) Handcrafted or Artistic Tangible Personal Property Sold by Certain Qualified Organizations. . . . (unchanged).

(e) Food Products, Nonalcoholic Beverages and Other Tangible Personal Property Sold by Nonprofit Youth Organizations. . . . (unchanged).

(f) Tangible Personal Property Sold by Certain Nonprofit Organizations. . . . (unchanged).

(g) Resale Certificates: Obligations of Persons Who Sell to Consumers. . . . (unchanged).

(h) Taxable Sales of Tangible Personal Property by or Through Nonprofit Organizations. . . . (unchanged).

(i) Transfer of Tangible Personal Property to Members. From April 1, 2010, until January 1, 2015, an organization described under Section 501(c) of the Internal Revenue Code (26 U.S.C.A.) is the consumer of tangible personal property transferred to its members, if the following requirements are met:

(1) The tangible personal property bears a logo or other identifying mark of the organization and is a promotional item or other item commonly associated with use by a member to demonstrate the member's association with, or membership in, the organization.

(2) The cost to the member of the organization for the acquisition of the tangible personal property is not more than the cost to the nonprofit organization to obtain and transfer to the member the tangible personal property, including any applicable sales or use tax paid by the nonprofit organization.

(3) Reasonable steps are taken by the organization to ensure that no member is allowed to acquire more than 30 identical items of tangible personal property or to resell the items to another person.

(4) The tangible personal property is not distributed for purposes of organized political campaigning or issue advocacy.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6018.9, 6359.3, 6360, 6361, 6361.1 and 6370, Revenue and Taxation Code; and Scholastic Book Clubs, Inc. v. State Board of Equalization (1989) 207 Cal. App. 3d 734.