

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(b) This section shall remain in effect only until January 1, 2015, and as of that date is repealed.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