


STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
 PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001
 TELEPHONE (916) 920 - 7445

MEMBER
 First District

BRAD SHERMAN
 Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
 Third District, San Diego

MATTHEW K. FONG
 Fourth District, Los Angeles

GRAY DAVIS
 Controller, Sacramento

BURTON W. OLIVER
Executive Director

June 14, 1994

[X]

[A]

Re: [No Permit Number]
 [X]

Dear [A]:

I am responding to your letter to the Legal Division dated April 6, 1994. I apologize for the delay. We did not receive the original letter but did receive the copy attached to your follow-up letter of May 6, 1994.

You indicate that you represent the [X] a tax-exempt organization based in Maryland, which has also been classified as a "supporting organization" under the Internal Revenue Code for the [X]. The [X] will be conducting its annual meeting in San Francisco in August. You anticipate that the [X] will assume responsibility for the scientific and educational functions of the meeting. Each participant will donate either \$25 or a new pair of shoes for distribution to the homeless. The cash contributions will be, after expenses, utilized to purchase additional shoes for the homeless. All such distributions will be carried out by the [P] in San Francisco.

You ask if the [X] will be exempt from sales and use taxes, including any local taxes, in conjunction with the meeting. You based your request on Revenue and Taxation Code sections 214 and 6375. (Unless otherwise stated, all statutory references are to the Revenue and Taxation Code.)

OPINION

A. Sales and Use Tax Generally.

In California, except where specifically exempted by statute, section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. "[I]t shall be presumed that all gross receipts are subject to tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale ..." (§ 6091.) "Exemptions from taxation must be found in the statute." Market St. Ry. Co. v. Cal. St. Bd. of Equal. (1953) 137 Cal.App.2d 87, 96 [290 P.2d 201]. The taxpayer has the burden

of showing that he clearly comes within the exemption.” Standard Oil Co. v. St. Bd. of Equalization (1974) 39 Cal.App.3d 765, 769 [114 Cal.Rptr. 571].)

B. Non-Profit Organizations.

There are no statutory exemptions from either the sales or use tax merely because the user of the property purchased is a nonprofit organization. (Annots. 390.0020, 390.0040. Sales and Use Tax Annotations are excerpts from previous Board staff opinion letters and serve as a guide to staff positions.) There are certain restricted exemptions and partial exemptions found in the statutes interpreted and implemented in Regulations 1570 and 1597. Since [X] is not any one of the organizations listed in Regulation 1597 the only exemption that could apply is found in Regulation 1570 which, in sub-division (a), sets out the four conditions that section 6375 requires to be present before sales by charitable organizations are exempt from tax:

- “(1) The organization must be formed and operated for charitable purposes and must qualify for the ‘welfare exemption’ provided by section 214.
- “(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 the purchasers or donees in distressed financial condition.
- “(4) The property sold or donated must have been made, prepared, assembled, or manufactured by the organization.”

Unfortunately, you do not give enough information for me to give you a definitive opinion. However, I am of the opinion that it is not likely that the exemption applies to the shoe donation. First, [X] does not (apparently) work out of a permanent location. The welfare exemption is available only to property owned and operated by a charitable organization and which is used or operated exclusively for one of the purposes enumerated in the statute, and, in order to receive the sales tax exemption, the welfare exemption must be obtained for that location. (Reg. 1570(a) (4) (A).) Second, [X] does not appear to be engaged in the relief of poverty and distress. Also, the shoes that are donated are likely withdrawn from the donors’ resale inventories, not “made, prepared, assembled, or manufactured” by them. The shoe donors (at least, those in California) would owe use tax on those donations. Thus, in the absence of further information, we conclude that the charitable exemption under Regulation 1570(a) does not apply to this donation.

You also seem to be concerned about liability for taxes due on the hotel and meal costs in San Francisco. Again, there is no general exemption for hotels renting room and furnishing meals to a charitable organization. Tax applies to sales of meals and hot prepared foods by hotels whether served on or off the premises. (Reg. 1603(a).) Where the rental of the rooms is a necessary part of the meal service, the room rental is included in the measure of tax, whether or not the room charge is separately stated. (Annot. 550.0260.) There may be exemptions from

[A]

-3-

June 14, 1994
165.0070

such locally-imposed taxes as transient occupancy taxes, but those taxes are imposed and administered locally. You would need to check with the hotel itself.

For your information, I have included copies of Regulations 1570 and 1603. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es

Enclosure: Reg. 1570, 1603