



STATE BOARD OF EQUALIZATION

916-327-3400

May 30, 1990

[X]

Re: [A]

Dear [X]:

I am writing in response to your April 6, 1990 letter to Randy Rose, Assistant to Board Member Ernest J. Dronenburg, Jr., inquiring as to whether [A] is exempted "from paying California sales and use tax on items which are purchased for donation to the needy."

According to your letter and the supplementary materials enclosed, [A] is a philanthropic organization which provides confidential assistance to needy persons. [A] purchases items such as clothing, groceries, toiletries, etc. for distribution to financially distressed individuals. [A] is exempt from federal income tax under the provisions of Internal Revenue Code Section 501(c)(3).

[A] has registered with the Board for a seller's permit. According to our records, [A] sells cookbooks and arts and crafts for which it pays California sales tax. [A] is staffed solely by volunteers and owns no property.

Unless specifically excluded or exempted from taxation by statute, all retail sales or purchases for use within this state of tangible personal property are subject to either sales or use tax. (Rev. & Tax. Code § 6051.) Although the legal obligation to pay sales tax is on the retailer, Civil Code Section 1656.1 provides that the retailer may seek sales tax reimbursement from the purchaser.

Revenue and Taxation Code Section 6375 was amended, operative January 1, 1990, and currently provides as follows:

"There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of, tangible personal property made, prepared, assembled, or manufactured by organizations formed and operated for charitable purposes qualify for the exemption provided by Section 2174 known as the 'welfare exemption,' which are engaged in the

relief of poverty and distress, and make the sales and donations as a matter of assistance to the purchasers and donees.”

As I understand it, sales by [A] of cookbooks and arts and crafts would not qualify for the sales tax exemption because such sales are made to the general public to raise funds and not exclusively to financially distressed purchasers. Thus, [A] is correct in reporting and paying tax on these sales.

Property purchased by [A] and donated to the needy is also subject to sales or use tax. It appears that [A] does not qualify for the “Welfare exemption” from property taxation provided by Revenue and Taxation Code Section 214. The fact that a charitable organization owns no taxable property on which it could claim “welfare exemption,” does not bar the organization from otherwise qualifying for the sales and use tax exemption provided by Revenue and Taxation Code Section 6375. (Good Shepherd Lutheran Home v. State Board of Equalization (1983) 139 Cal.App.3d 876.) However, the organization must be one which would qualify for the exemption if it did own property. Organizations such as [A], whose primary activity is fundraising, would not qualify for the “welfare exemption” from property tax. (Cedars of Lebanon Hospital v. County of Los Angeles (1950) 35 Cal.2d 729.) If you believe that [A] would qualify for the “welfare exemption” from property tax, please submit supporting documentation and we will reconsider the issue.

I hope this letter clarifies [A]’s sales and use tax obligations. Please feel free to contact me if you have further questions.

Sincerely,

Stella Levy
Tax Counsel

SL:cl

bc: Torrance District Administrator
Mr. Randall Rose