

390.0000 NONPROFIT ORGANIZATIONS

See also Charitable Organizations.

390.0005 Acting as Agents. A nonprofit organization may buy and sell for its own account or it may act as an agent. The organization will be regarded as an agent of the supplier if it is selling the products on behalf of the supplier rather than on its own behalf. When the evidence shows that the organization solicited orders, collected payments, and distributed tangible personal property on the supplier's behalf, the organization will be regarded as the agent of the supplier. 2/16/95.

390.0020 Applicability of Tax Generally. There are no statutory exemptions from either the sales tax or the use tax merely because the user of the property purchased is engaged in charitable activities, is a nonprofit organization, or enjoys certain privileges under property tax statutes or income tax statutes. Hence a charitable foundation which purchases property and takes delivery in California, such property to be used upon a ship engaged in professional teaching activities in foreign countries, is subject to the same rules regarding the applicability of sales and use taxes as any other individual or organization. 8/24/64.

390.0040 Applicability of Tax Generally. Retail sales by a nonprofit foundation made in California are subject to sales tax, even though the foundation is headquartered or incorporated outside the state. There is no tax exemption for a nonprofit organization. 2/20/63.

390.0050 Concession Stand Sales. The Associated Student Body of a high school requested information regarding the application of tax to the following items:

1. The Associated Student Body, as part of its fund raising projects to help meet the budget for sports and other school activities, operate a snack bar and sell items such as fountain soda, hostess cup cakes, candies and chips.

Since the snack bar appears to be open on a regular basis, whose sales are not on an intermittent basis, the student group is not a statutory consumer under Revenue and Taxation Code section 6361. Instead, the student group is the seller making retail sales of tangible personal property, and must pay sales tax to the Board on its taxable sales.

2. Several student clubs operate concession stands at the schools basketball games.

The regulation defines "irregular or intermittent" to include sales made at refreshment stands or booths at scheduled events of organized youth sports leagues.

3. A Pepsi Cola vendor places a vending machine on campus, collects and counts the money from the machine, and gives the Associated Student Body a rebate on each case sold.

Assuming the vending machine operator pays tax on his sales, the rebate represents a portion of the after tax profits. The Pepsi Cola vendor is the retailer of the sodas. The Associated Student Body is not required to report and pay tax on these sales. 3/31/92.

390.0055 Education Foundation. A non-profit education foundation, whose primary purpose is raising funds for support of all schools within a school district, is not a P.T.A. "equivalent organization" within the meaning of Regulation 1597 (e). The narrow purpose and objective (fund raising) are not sufficiently similar to that of a P.T.A. 2/11/93.

390.0060 Film Shown in California. A nonprofit educational organization is not exempt from the use tax imposed on the purchase price of new film and tape shipped to California television stations. The use tax is not a property tax and is thus not subject to the exemption clause applicable to property taxes with respect to nonprofit organizations in the California Constitution. 1/22/65.

390.0070 Football League for Boys. A boys football league does not qualify for an exemption under Revenue and Taxation Code section 6361 when it excludes girls from participation in its tackle football

program. The special status as a “statutory consumer” is available only to such nonprofit organizations which do not discriminate on the basis of race, sex, nationality, or religion. The fact that the League’s policy of excluding girls may not violate equal protection and due process standards of the United States or California Constitutions is irrelevant to a proper interpretation of the statute. 1/4/77.

390.0080 Free Meals to Members. Sales of food products to a fraternal organization for the preparation of free meals for its members are not taxable because food products are exempt from tax. However, the food products exemption does not include alcoholic and carbonated beverages, ice, and napkins, which are subject to sales tax as being consumed by the donor, in this instance, the fraternal organization. If the meals are prepared and served by a caterer under a contract with the fraternal organization; the amount paid by the fraternal organization for the free meals served to its members are subject to sales tax. 3/3/70.

390.0081 Friends of SCICON. The “Friends of SCICON” qualifies as an equivalent organization under Regulation 1597(e). It is a nonprofit organization which includes parents, teachers, school authorities, and the general public, and whose objectives include a coordinated promotion of academic programs for the Clemmie Gill School of Outdoor Science and Conservation Education (SCICON). 4/15/86.

390.0083 Fund-Raising Organization Supplies and Premiums. A fundraising organization sells goods through student groups and operates in a manner which makes it the retailer of the goods sold through the student solicitors. In connection with these fund-raising activities it provides the following category of goods:

- (1) Catalogs, posters and other such items which it ships from its California warehouse to its employees for distribution to school groups.
- (2) Samples of prizes and merchandise.
- (3) Envelopes, mailing labels and flyers which are shipped from the California warehouse directly to the school groups.
- (4) Prizes which are awarded to students and sponsors.

All this property has been purchased ex-tax either under a resale certificate or from out of state.

The fund-raising organization is responsible for the tax on these items as follows:

(a) It is the consumer of catalogs, posters and other such items provided to the school groups for the solicitation of sales. While the total amount it receives for its sales includes the reimbursement of the cost of these items, there is no specific consideration paid for these goods. The school groups pay only for merchandise sold. If no items are sold or the event is canceled, the school groups pay nothing.

Since the fund-raising organization is the consumer of these items, it may not purchase them under a resale certificate. The fund-raising organization is liable for sales tax on the sale of the items to it if at the time of purchase it issued the resale certificates and it knew it would not resell the items. Otherwise, it owes use tax on its purchase price of any such consumed items mistakenly purchased under resale certificates. In addition, it must immediately cease purchasing the property it will consume under resale certificates.

In addition they are responsible for use tax on the items purchased out of state and shipped to in state employees for redelivery to in state schools. Items purchased out of state and sent to employees out of state or delivered to school groups out of state are not subject to tax under the provisions of section 6009.1. This is because the gift of the merchandise to the school groups is considered to take place outside the state.

(b) The fund-raising organization is the consumer of the samples. While the samples were used for demonstration and display, they are not held for sale in the regular course of business. The evidence is that upon obsolescence the samples are destroyed or given away. They were purchased in small lots for the limited purpose of being used as samples.

(c) The fund-raising organization is liable for tax on the flyers, mailing labels and envelopes in the same manner as the catalogs, etc., except that the section 6009.1 exclusion is not available. The property was sent directly to the student groups. The gift took place in California when the property was deposited in the mail. Accordingly, there was a “use” in California and the property is subject to tax, notwithstanding any subsequent out-of-state shipment.

(d) The fund-raising organization is the retailer of the prizes, since the award of such prizes was dependent upon the volume of sales made by the participants or the achievement of other goals. Prizes shipped out of state are exempt as sales in interstate commerce. The in state deliveries of prizes are subject to tax measured by the stated value of the prize. If there is no stated value, the organization’s cost will be presumed to be the selling price. 4/26/90. (Am. M99-1).

390.0084 Fund-Raising Program—PTA. A taxpayer is in the business of providing Parent Teacher Associations (PTA) with merchandise that the PTA sells as a part of its fund-raising activities. Under the taxpayer’s agreement with the PTA, the PTA is purchasing the property for resale and selling on its own account. The taxpayer provides the PTA with brochures and materials, an optional incentive program that awards prizes to the students that participate, and the products to be sold.

In the past, the taxpayer used generic brochures which list the products for sales. The taxpayer’s name was not listed on either the brochures or sales materials used by the PTA. The taxpayer recently developed a specific marketing plan that will capitalize on a unique trade name and logo that the taxpayer has registered for use. This will enable the taxpayer to establish a better name identification with PTA customers. While the forms provide for the PTA to be prominently listed on the order form used by its student members, the taxpayer will be including its trade name and logo on the sales brochures and its logo on the sales order form that will be used by the PTA’s members.

Under Regulation 1597(f), PTA and equivalent organizations are classified as consumers. If the taxpayer makes sales to the PTA, which, in turn, sells on its own account, the taxpayer’s sales tax liability is measured by its gross receipts from sales to the PTA. On the other hand, if the PTA acts as an agent making sales on behalf of the taxpayer, the sales tax liability of the taxpayer is measured by the gross receipts of the sales to the ultimate purchasers. The mere presence of the taxpayer’s trade names and logo on the sales brochures and the logo on the sales forms would not alone cause the PTA to be regarded as the agent of the taxpayer rather than buying and selling on its own account, provided the sales brochures and sales forms clearly show the PTA solicits the orders from the customers and collects the sales price from the customer in its own name, and the contract provides that the PTA is purchasing on its own account. 11/6/96.

390.0085 Gift of Ribbons. A nonprofit organization engaged in research to find a cure for AIDS receives red ribbons (bows) donated by a supporter. The supporter pays the sales tax on the materials and assembles the ribbons. The organization gives the ribbons to contributors but will also give the ribbons away to anyone, without receiving a contribution. Since the organization does not purchase the ribbons, there is no basis for a use tax liability. In addition, since the giving of the ribbons is not dependent on the receiving of a donation, they are not considered sales and there is no sales tax liability. 2/8/93.

390.0086 Gift Wrap Material and Gifts Sold by PTAs. A taxpayer sells gift wrap, gift wrapping accessories and gift items to nonprofit, qualified Parent-Teacher Associations (PTAs). The taxpayer provides the PTA with a brochure of its products (with order form attached) that identifies the product by trade name only. The brochure is pre-priced as requested by the PTA. The PTA solicits orders in its own name. The taxpayer’s name only appears as a trade name on the brochure.

The brochure has a text on the back cover that reads: “Thank you for supporting our fundraising sale,” followed by a blank space in which the “school/organization name” is supposed to be entered. The next sentence reads: “Please call your school or organization if you have any questions.” On the order form contained in the catalog, the purchaser is advised at the top and again at the bottom of the page to “make checks payable to your school or organization.”

The contract between the taxpayer and the school/organization provides that the school/organization's payment for the merchandise must be made by a check issued by the school/organization (no personal checks). The contract also provides that the school/organization is purchasing the property on its own account for resale to its customers, and is not acting as the taxpayer's agent or representative when making sales to its customers.

Based on the facts presented, the non-profit parent-teacher associations would be considered as buying and selling for their own account since they meet all of the four factors required in Regulation 1597(h). The PTA will be required to obtain a permit and will be considered the retailer unless the taxpayer (supplier) has been classified by the Board as a retailer under section 6015, or the PTA is regarded as a "statutory consumer" under subsection (d), (e), or (f) of Regulation 1597. If the PTA is buying and selling for its own account and qualifies as a statutory consumer, the taxpayer (supplier) would be the retailer and it would owe sales tax, or must collect use tax, on the retail selling price of the property to the PTA. 4/25/96.

390.0090 Meals Served to Low-Income Elderly. A nonprofit organization which provides low-income housing for the elderly, and which sells meals and food products in its dining room and cafeteria, is not exempt from the sales tax on the sale of meals under section 6374 if it fails to show that it receives funds from this state or the United States specifically for the sale of meals to low-income elderly persons at or below cost. FHA insurance of loans for construction of housing and other facilities does not satisfy the funding requirements of section 6374. Furthermore, meals sold to employees or the general public not meeting the definition of "low-income elderly persons" are subject to the sales tax. 3/14/73.

390.0092 Merchandise Given without Donation. A nonprofit educational foundation solicits funds to aid schools. The foundation will participate in a school fall festival. The main purpose of having a booth at the festival is to advertise the existence of the foundation and to solicit donations. The foundation is planning on giving out pencils on a random basis. The foundation paid sales tax reimbursement to its vendor at the time it purchased the pencils.

The foundation is the consumer of the pencils it purchased since the pencils are given away without charge. No further tax is due when the foundation gives away tax-paid pencils. 1/18/96.

390.0095 Museums Open to Students. A museum's practice of admitting secondary school students free of charge one morning a week as part of a planned school program will be considered to qualify under section 6365(d)(3) as "a museum which is open to a segment of the student or adult population without charge." The "segment" in this case would be all secondary school age children in the Pasadena School District. The museum allowing free admission to children under 12 when they are accompanied by an adult would not, by itself, qualify as being open to a segment of the student population without charge. The free admission for children under 12 being conditioned on a paid admission results in it not being truly a free admission as section 6365(d)(3) requires. 4/4/79.

390.0095.900 Nonprofit Organization—Parent Co-operative. The parent cooperative organization of a nursery school cannot be considered a PTA equivalent organization because the members are required to fulfill hourly requirements for day care and education, thus being involved in the actual operation of the school rather than functioning as an entity separate and apart from the daily operations of the school. 6/26/86.

390.0096 Nonprofit Organizations—Leases. A nonprofit organization rents beds and medical equipment such as wheelchairs, walkers, crutches, etc., to people with HIV and AIDS. The equipment has been acquired by donation from a number of sources. Since the property was not purchased with sales tax paid and since the donor's donation is exempted from use tax by Revenue and Taxation Code section 6403, the use tax is due on the rental receipts from the leases or rentals of these beds and equipment. This tax application is correct unless the equipment qualifies as an exempt medicine pursuant to Regulation 1591(k). Contrary to common belief, there is no general exemption from the sales and use tax on sales made by nonprofit organizations. 4/22/93.

390.0097 Nonprofit Organization Sales. A printer produces fund-raising literature which the not-for-profit customer will mail independently. There is no exemption from sales tax merely on the basis that the purchaser is a non-profit organization.

Tax applies to the transfer of plates made from typography. Tax would also apply to the entire charge including any portion of the charge attributable to type composition performed by the retailer of the printing plate, whether the charge is separately stated or not. 11/2/92.

390.0097.790 Sales by High School Youth Organizations. High School Youth Organizations are the consumers and not the retailers of multiple cultural calendars and address books which they sell, provided they meet the following four conditions:

- (1) The sales must be by the student youth group and not by the school itself.
- (2) The property sold must be made or produced by members of the student youth group.
- (3) The youth group's sales must be made on an irregular or intermittent basis.
- (4) The youth group's profits from the sales must be used exclusively in furtherance of the purpose of that student youth group.

If all conditions are met, the student youth group is the consumer of items purchased to produce the calendars and address books. 10/4/93.

390.0097.900 San Francisco Educational Fund. The San Francisco Educational Fund, which is a nonprofit organization under Internal Revenue Code section 501(c)(3), qualifies as a PTA equivalent organization under Revenue and Taxation Code section 6370. Based on information submitted, the Fund meets the minimum requirements of the objectives and services offered in the California PTA Bylaws. Accordingly, the Fund is the consumer of, not a retailer of, tangible personal property which it sells in connection with its fund-raising activities. 4/25/89.

390.0098 School Fund-Raising Auctions. A high school has an annual auction put on by the parents of the students. The proceeds of the auction benefit all students, in accordance with the policies of the high school board. All items sold at the auction have been donated to the school.

If the parents' organization is equivalent to a parent-teachers association, as described in Regulation 1597(g), it qualifies as a consumer and not a retailer of the tangible personal property sold. The fact that the property sold is donated to the school does not affect the exemption. 4/8/92.

390.0100 State PTA Councils and Districts. Those PTA councils and PTA districts which have been specifically authorized to operate within one or more schools by the governing authority of the school(s) are consumers of materials they sell, provided the profits are used exclusively in furtherance of the purposes of the organization. 4/27/79.

390.0130 Student Body Organizations. A student body organization qualified under section 6361(b)(2)(B)(i), which sells T-shirts, school bags, school pens and pencils, etc., may be considered to have "produced" the items by members of the organization if the items have the school name or logo or other insignia on them. The organization would be the consumer of such items rather than the retailer, provided they were sold on an irregular or intermittent basis. If the items do not have the school or organization imprint or if they are sold on a continuous or regular basis, e.g., from the book store or other permanent facility on the school premises, the requirements of the section are not met, and the organization is the seller of the property with the same reporting and payment responsibilities as all other retailers. 3/17/89.

390.0400 Wine-Tasting Parties. A charity organization hosts a wine-tasting party, making a charge for admission. The entire charge is taxable unless it can be demonstrated that the cost of the wine consumed by

the attendee is insignificant in relation to the charge for admission or a separate charge is made for the wine. 11/17/75.

390.0500 Youth Summer Camp. Tax applies to sales of meals at summer camps, whether operated by municipal or private corporations or other parties. There are no statutory exemptions from the sales or use tax merely because the user of the property purchased is a nonprofit organization. If the camp qualified as an educational institution under Regulation 1506 (f) an exemption would be available. If the camp was a qualified youth organization under Regulation 1597 (d) an exemption may be available.

Sales of souvenirs with or without camp logos are taxable because they are sold at a camp store which has regular hours and is therefore not classified as “intermittent or irregular” as required by Regulation 1597 (d) (1) (C).

Sales of firewood made of dead trees are taxable, as the firewood is not made by members of a qualified non-profit youth organization, as defined in Regulation 1597 (d). 12/9/92.

390.0600 Sales Made Once a Week. An organization operating a concession stand at a weekly bingo establishment does not make sales on an “irregular or intermittent” basis. As explained in Revenue and Taxation Code section 6361, “irregular or intermittent” excludes activities conducted on a regularly scheduled basis. Therefore, the organization is not a consumer, but is the retailer of the products sold. 12/11/91.

390.0605 “Save the Books” Organization. The “Save the Books” organization was organized to raise funds for replacement of books, periodicals, documents and specialized collections which were destroyed in the fire in the Central Los Angeles Library of April 29, 1987. The organization is regarded as equivalent to “Friends of the Library” for purposes of Revenue and Taxation Code section 6370 and is a consumer of tangible personal property which it sells to raise funds to use exclusively to further the organizations purposes. 12/21/87.

390.0610 Nonprofit Organization May Not Charge Sales Tax Reimbursement. Certain qualified nonprofit organizations are regarded as consumers of property which they sell in their fund-raising activities. Accordingly, they cannot charge tax or tax reimbursement to their customers. If they charge tax or tax reimbursement, it constitutes excess tax reimbursement and must be returned to the customer or paid to the Board. 4/6/95.

390.0915 Nonprofit Organizations. A private religious school’s parent auction committee is authorized by the school’s board to host an annual auction for the benefit of the school. The proceeds from the auction are given to the school for its general operation. Membership on the committee is voluntary. In determining whether the committee qualifies as an “equivalent organization” pursuant to section 6370, it is assumed that the committee functions exclusively in connection with the annual auction and that it does not have bylaws or statements of purpose. An equivalent organization must perform the same type of services for public or private schools that are performed by the PTA of the school. The California PTA’s bylaws list the objectives of the PTA. A partial list follows:

- (1) To promote the welfare of children and youth in the home, school, church and community.
- (2) To raise the standards of home life.
- (3) To secure adequate laws for the care and protection of children and youth.

An organization oriented toward a once a year event would not seem to have the breadth and depth of purpose inherent in an organization that would be the equivalent of the PTA. 12/4/84.

390.0920 Nonprofit Youth Organization. Although a youth organization has tax exempt status for federal and state income tax purposes, California law does not provide a general, blanket exemption from tax for sales and use tax purposes. This means that a retail sale of tangible personal property to or by such

organization will be subject to tax measured by the full selling price unless specifically exempt or excluded by statute. 5/24/95.

390.0935 **PTA as Agent.** When a parent teacher association (PTA) acts as an agent for a book seller at a book fair, the sales made at the book fair are retail sales subject to tax and the book seller is the retailer. The special provisions of section 6370 which make the PTA a consumer of certain property which it sells are not applicable where the PTA acts as the agent of the seller. 8/27/85.

[390.0940](#) **PTA Equivalent Organization.** Specialized groups such as athletic booster clubs, band mothers, drama societies, etc., are not considered PTA equivalent organizations because they are not concerned with and their efforts are not directed to benefit all of the students, but rather the limited few related to the group's interest. Similarly, fund raising activities by students or student organizations do not qualify them for treatment as consumers since an organization not including parents could not be PTA equivalent. 8/10/78.