

Initial Statement of Reasons

Proposed Amendments to California Code of Regulations, Title 18, Section 1506, *Miscellaneous Service Enterprises*

SPECIFIC PURPOSE AND NECESSITY

Current Law

RTC section 6363 provides an exemption from sales and use tax for meals served or furnished to students of a school or educational institution. Regulation 1506, subdivision (h), *Summer Camps*, currently explains that a camp qualifies as a school or educational institution and the exemption for meals served to students, if the camp “conduct[s] regularly scheduled classes, with required attendance, in charge of qualified instructors.”

These requirements establish that a camp session must promote an educational program through the conduct of regularly scheduled classes to qualify as a school or educational institution. However, camps may conduct their classes outside a traditional classroom setting and often do. For example, guided nature hikes can teach campers about ecology, conservation, and geology and must be conducted outdoors. In addition, classes in spiritual training or physical education, including, but not limited to, knot tying, archery, marksmanship, swimming, boating, and arts and crafts, are educational. Therefore, all of these types of classes will meet the first requirement of the Regulation 1506, subdivision (h) test if they are regularly scheduled.

Further, camps may allow campers to select the classes they wish to participate in and still have required participation. For example, a camp may allow a camper working on a merit badge for archery to choose to attend classes on range safety and archery practice, and allow a camper working on a hiking badge to attend classes in first aid and wilderness survival and still satisfy the “required attendance” test so long as the camper must attend his or her selected classes. However, a camp will not satisfy the “required attendance” test if it offers a variety of classes and recreational activities, requires campers to attend an orientation on the first day, but otherwise allows campers to choose to attend as many of the scheduled class or activities as they want or choose not to attend any class or activities during the rest of the camp session. In general, most youth camps include activities that qualify as regularly scheduled classes with required attendance, but camps should document that attendance is required in their camp brochures, registration materials, website information, camper rule agreements, and other materials in order to substantiate that they qualify for the exemption.

Furthermore, a class is taught by a qualified instructor when the instructor has the formal training or sufficient experience to adequately prepare the instructor to teach his or her subject. Therefore, the level of training and experience needed to be a qualified instructor depends on the class being taught. For example, an instructor may need certification by the American Heart Association or Red Cross to be “qualified” to teach CPR or general first aid and a kayaking instructor may need to have years of experience in kayaking and water safety training to be “qualified” to teach kayaking. In general, if the camp determines that an instructor is reasonably qualified to lead a class, then the camp will have met this requirement of the regulation. However, camps should maintain records that show their instructors’ level of training and/or experience related to the area they teach to substantiate that they qualify for the exemption.

Proposed Amendments

Young Life Appeal

On February 24, 2010, the Board conducted an oral hearing regarding a sales and use tax appeal involving the issue of whether the exemption provided by RTC section 6363 and Regulation 1506, subdivision (h) applied to sales of meals at a Young Life camp facility. Therefore, the Board had to decide whether the camp qualified as a school or educational institution because it conducted regularly scheduled classes, with required attendance, in charge of qualified instructors.

The camp did not conduct traditional classes in classrooms. However, the camp established that it was a traditional camp and conducted an educational program with scheduled activities including religious, leadership, and life skills training, and that campers were required to attend scheduled activities which were taught by qualified instructors. Therefore, the Board concluded that the camp qualified as a school or educational institution within the meaning of Regulation 1506, subdivision (h) and that its sales of student meals were exempt from sales and use tax. In addition, the Board referred Regulation 1506, subdivision (h) to its Business Taxes Committee and directed committee staff to work with interested parties to draft clarifying amendments that would help taxpayers and Board staff more easily determine whether camps qualify as schools or educational institutions.

Interested Parties Process

Accordingly, Board staff met with interested parties on May 19, 2010, and July 7, 2010, to discuss potential revisions to Regulation 1506. Board staff also had the opportunity in July to visit a traditional camp, which qualified as an “organized camp” under Health and Safety Code section 18897, to gain a better understanding of how traditional camps currently operate.

During the interested parties process, Board staff determined that the provisions of Regulation 1506, subdivision (h) are intended to apply to traditional camps, similar to those operated by the Young Life organization, YMCA, YWCA, Girl Scouts, Boy Scouts, camps accredited by or affiliated with the American Camp Association, and camps that are approved members of the Christian Camp and Conference Association. Board staff determined that the provisions in Regulation 1506, subdivision (h) are not intended to apply to resorts, other hotel and lodging establishments, or businesses that provide all inclusive outdoor recreation packages outside a traditional camp setting.

During the interested parties process, Board staff concluded that the types of traditional camps that may qualify as schools or educational institutions also qualify as “organized camps,” as defined in Health and Safety Code section 18897, subdivision (a), which provides that:

(a) "Organized camp" means a site with program and facilities established for the primary purposes of providing an outdoor group living experience with social, spiritual, educational, or recreational objectives, for five days¹ or more during one or more seasons of the year.

Board staff also concluded that many of the types of businesses that might seem similar to camps, but which are not traditional camps that are intended to be able to qualify as schools or educational institutions, cannot qualify as “organized camps,” as defined in Health and Safety Code section 18897, subdivision (a). This is because the term “does not include a motel, tourist camp, trailer park, resort, hunting camp, auto court, labor camp, penal or correctional camp and does not include a child care institution or home-finding agency. The term ‘organized camp’ also does not include any charitable or recreational organization that complies with the rules and regulations for recreational trailer parks.” (Health & Saf. Code, § 18897, subds. (b) and (c).)

Therefore, Staff recommended that the Board amend the provisions of Regulation 1506, subdivision (h) to require that a camp be an “organized camp” as defined in Health and Safety Code section 18897 to qualify as a school or educational institution and to provide examples of camps that do and do not qualify as schools or educational institutions.

Furthermore, during the interested parties process, Board staff learned that many traditional camps now operate year-round by offering sessions to campers that

¹ The Board interprets this provision to mean that a camp organization meeting the 5-day requirement for one camp session continues to meet the requirement even if it also conducts some shorter camp sessions. That is, staff would evaluate the camp year, rather than any one camp session. For example, a camp offers 5-day outdoor education camps for 6th graders and also provides 3-day outdoor education camps for 4th graders. Because the camp meets the 5-day requirement with the 6th grade camp sessions, the camp is still considered an “organized camp” during the 3-day camp sessions.

attend schools that are not on a traditional calendar year and offering camp sessions during the school year. Therefore, Board staff recommended that the Board change the name of subdivision (h) from “summer camps” to “organized camps.”

In addition, Board staff recommended restructuring subdivision (h) so that the first sentence becomes paragraph (1) and all of the remaining text becomes paragraph (2). Board staff recommended amending the first sentence in new paragraph (1) so that it applies to “camps,” in general, not just “summer camps,” and amending new paragraph (2) so that it clearly applies to camps qualifying as schools or educational institutions. Board staff recommended revising the text of the first sentence in new paragraph (2) to make it read more clearly and expressly state that a qualifying “camp’s sales of student meals are not subject to tax.” Board staff recommended deleting the second sentence in new paragraph (2) and replacing it with a new sentence that clearly enumerates the requirements a camp must meet in order to qualify as a school or educational institution. Finally, staff recommended that the words “and the tax returned” be deleted from the second to last sentence in Regulation 1506, subdivision (h) because the words are awkward and confusing.

Business Taxes Committee

Board staff incorporated its recommendations into Formal Issue Paper 10-008 and submitted the issue paper to the Board for consideration along with three letters of support from the: California State Alliance of YMCAs and the California Collaboration for Youth; the American Camp Association, Southern California/Hawaii; and the Christian camps in California that are approved members of the National Christian Camp and Conference Association (CCCA).² During the Board’s Business Taxes Committee meeting on September 15, 2010, the Board determined that staff’s recommended amendments were necessary to:

- Clarify that Regulation 1506, subdivision (h)’s exemption for student meals provided by camps that qualify as schools or educational institutions may only apply to traditional camps that qualify as “organized camps” as defined in Health and Safety Code section 18897;
- Provide examples that will help taxpayers and Board staff identify camps that qualify as schools and educational institutions and other types of similar businesses that do not qualify; and
- Revise the current language in the first, second, and fourth sentences in subdivision (h) so that they do not read awkwardly and clearly specify the application of tax.

Therefore, the Board approved staff’s recommendations and authorized Board staff to begin the formal rulemaking process to incorporate the recommended

² The three letters of support were included in exhibit 5 to Formal Issue Paper 10-008.

amendments into Regulation 1506, subdivision (h), for the specific purposes of clarifying the requirements for a camp to qualify as a school or educational institution and clarifying how tax applies to sales of tangible personal property by camps, including sales of student meals.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 10-008 and the exhibits to the issue paper, including the three letters of support included in exhibit 5, in deciding to propose the amendments to Regulation 1506, subdivision (h). The Board also relied upon comments made by Board staff and Catherine Barankin, Director of Public Policy for the California Alliance of YMCAs, during the Business Taxes Committee meeting on September 15, 2010.

ALTERNATIVES CONSIDERED

The Board considered whether or not to take any action to clarify Regulation 1506, subdivision (h) during the Business Taxes Committee meeting on September 15, 2010, but did not consider any alternative language to the proposed amendments to Regulation 1506. Neither Board staff nor the interested parties submitted any alternative language for the amendments to Regulation 1506, subdivision (h) to the Board for consideration, and, as a result, the Board did not reject any reasonable alternatives to the proposed amendments.

NO ADVERSE ECONOMIC IMPACT ON BUSINESS

The Board has determined that the proposed amendments to Regulation 1506, subdivision (h) are consistent with the Board's current application of RTC section 6363 and Regulation 1506, subdivision (h). The proposed amendments to Regulation 1506, subdivision (h) merely clarify the requirements for a traditional camp to qualify as a school or educational institution, provide examples to help Board staff and taxpayers more easily identify traditional camps that qualify as schools or educational institutions and other types of businesses that do not qualify, and clarify the language explaining the application of tax to camps' sales of tangible personal property, including student meals. Furthermore, the proposed amendments continue to allow traditional camps to qualify as schools or educational institutions that receive the exemption for sales of student meals and do not change the application of sales and use tax to camp's sales of tangible personal property. Therefore, the Board has made an initial determination that the proposed amendments to Regulation 1506, subdivision (h) will not have a significant adverse economic impact on business.

The proposed regulation may affect small business.