

**STATE BOARD OF EQUALIZATION**

916-445-2488

September 1, 1978

[X]

Dear [X]:

Your letter of July 25, 1978, to Mr. Robert Nunes has been referred to the undersigned for reply. You have requested a legal opinion concerning the application of tax to sales made by the [A].

As we understand it, the [A] operates a thrift store which sells used clothing. You state that most of your customers are individuals who would not otherwise be able to buy clothing except at the low secondhand price you offer.

Your store is operated by a paid store manager, but the rest of your clerks work on a volunteer basis. All of the merchandise sold has been donated. All profits go to the [A] to assist in the costs of spaying and neutering animals adopted for pets from the [A] as well as to pay entirely for hardship cases. Hardship cases are those people who could not otherwise afford to have the animal spayed or neutered. The purpose of the spay and neuter program is animal control. In addition to this method of animal control, the [A] destroys stray or unwanted animals. Other off-shelter activity consists of picking up dead and injured animals as well as live animals and birds.

The [A] feels that the selling of thrift shop merchandise to those who are in poverty and distress directly aids the store's customers and that the [A] acts as a middle man in the transfer of donated merchandise from the more affluent to the poor. Finally, you feel that the control of animals, made possible by the thrift store sales, is of greatest help to poverty area residents. You feel that the diseased, sick, injured and unwanted animals are a health hazard and are sometimes dangerous as well. You note that this type of animal is usually found in poverty areas where animals run loose, uncared for, to reproduce and add more animals to be improperly cared for. For the reasons stated above, you feel that the [A]'s thrift shop sales should be exempt from tax.

Revenue and Taxation Code Section 6375 provides that:

“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 214 of the Revenue and Taxation Code known as the ‘welfare exemption’ which are engaged in the relief and distress, and make the sales as a matter of assistance to purchasers.”

Sales and Use Tax Regulation 1570, “Charitable Organizations”, elaborates on the requirements of Section 6375 in part (a) which sets out the four conditions which must be present before sales by charitable organizations are exempt from the sales tax:

- “(1) The organization must be formed and operated for charitable purposes, and must qualify for the ‘welfare exemption’ from property taxation provided by Section 214 of the Revenue and Taxation Code.
- (2) The organization must be engaged in the relief of poverty and distress.
- (3) The organization’s sales must be made principally as a matter of assistance to purchasers in distressed financial condition.
- (4) The property sold must have been made, prepared, assembled or manufactured by the organization.”

Taking each of these conditions and applying each to the [A]’s operations. It is our opinion that sales at the [A]’s Thrift Shop do not qualify for the exemption provided for in Revenue and Taxation Code Section 6375 and Regulation 1570.

First, there is the requirement that the organization must qualify for the “welfare exemption” from property taxation provided by Section 214 of the Revenue and Taxation Code. Section 214 provides, in part, that property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if: “The property is used for the actual operation of the exempt activity....” For the most part, property used in instances involving thrift shops is not used in the actual operation of an exempt activity but is used to raise funds, and it is the funds that are then used in an exempt activity. Where such occurs, the requirements of Section 214(3) are not met.

In Cedars of Lebanon Hospital v. County of Los Angeles, 35 Cal. 2d 729, wherein the hospital sought the welfare exemption for that portion of its premises upon which a thrift shop was being operated for sales of donated clothing, the proceeds from which were devoted to the upkeep of a free children’s clinic, the California Supreme Court held that the exemption was not

available therefore. Although the proceeds were used for the accomplishment of exempt purposes, the property for which the exemption was claimed was not being used for the actual operation of the exempt activity:

“But such enterprise, laudable as its purposes manifest it to be, cannot escape classification as an independent undertaking to raise revenue, and it cannot be said to have been incidental to and reasonably necessary for the accomplishment of hospital purposes. In truth it was conducted solely for revenue purposes as distinguished from hospital purposes. While profit or gain derived from the operation of the thrift shop benefited the hospital in providing support for its clinic, such consideration must be viewed in the light of the welfare exemption law’s express proviso that ‘property used exclusively... for hospital...or charitable purposes is exempt from taxation if ... the property is not used or operated by the owner or by an other person for profit, regardless of the purposes to which profit is devoted’

* * *

So here the use of the income from the ‘thrift shop’ for ‘hospital...or charitable purposes’ is of no significance when the determinative prerequisite is ‘the use of the property itself’ – a condition made doubly certain under the terms of the statute’s exception expressly denying exemption to the property if ‘used or operated ... for profit, regardless of the purposes to which the profit is devoted.’”

With respect to when property is used in instances involving thrift shops then, administratively, the Board has found thrift shops to be eligible for the welfare exemption only where the following condition or conditions exist:

- A. The thrift shop sells property which has been processed in some manner by handicapped persons who are being rehabilitated by rehabilitation program conducted by the claimant, or
- B. The persons being rehabilitated are employed in the operation of the thrift shop, and
- C. If there is a management contract, the contract may provide remuneration to the manager on the basis of a reasonable percentage of the gross sales, provided that there is a maximum dollar amount of salary and that such amount is reasonable, or the remuneration may be on the basis of a reasonable percentage of the net earnings.

Neither condition A nor condition B is met in this instance. Therefore, the [A] thrift shop does not qualify for the “welfare exemption” from property taxation provided by Revenue and Taxation Code Section 214.

The second condition of Regulation 1570 requires that the organization must be engaged in the relief of poverty and distress. It is our opinion that the [A]'s activities do not fit within this requirement. The principal purposes of the [A] are, as we understand it, to give shelter and aid to animals; to serve as a placement center for unwanted animals; to provide animal control; and to humanely destroy sick or unplaceable animals. While these activities are both vital and necessary services, they are not, we believe, the type of activities which can be classified as the relief of poverty or distress.

Third, the organization's sales must be made principally as a matter of assistance to purchasers in distressed financial condition. It is our opinion that sales made by the thrift shop are not made primarily as a matter of assistance to those in poverty and distress but as a fund raising activity of the [A]. The net income from the thrift shop sales is not reinvested in the operation of the thrift shop but is instead used to fund the [A] operations. Because of its location and the type of merchandise it sells, the thrift shop might have the incidental effect of assisting purchasers in a distressed financial condition; however, the sales are not made principally for this purpose. Thus, we are of the opinion the thrift shop activities do not fulfill the third condition of Regulation 1570.

Finally, the property sold must have been made, prepared, assembled or manufactured by the organization. We have taken the position that when property to be sold by charitable organization is gathered together and prepared for sale in a thrift shop, that the property has been made, prepared, assembled or manufactured by the organization. Thus, your organization does meet this condition.

In light of the fact that the [A] Thrift Shop does not meet all the conditions required in Regulation 1570, we are of the opinion that sales made by the thrift shop are not exempt from tax. If you have further questions concerning this matter, please write this office.

Very truly yours,

Mary C. Armstrong
Legal Counsel

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