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March 25, 1996

E. L. SORENSEN, JR.
Executive Director

[A]

Re: [X]

Dear [A]:

This is in response to your letter dated February 11, 1997 regarding the applicability of tax to sales by the [X] thrift stores. You state:

“By way of background, the [X] is organized as a 501 (c)(3) nonprofit corporation. Our organization owns and operates approximately 50 [sic] “which are upscale thrift stores from which we sell donated clothing and used household items. Currently, we collect and report sales tax on the items sold by each store.

“I understand that a bill was signed by the Governor last year which provided a sales tax exemption for goods sold by certain thrift stores (See AB 3187 (Martinez); Chapt. 781, Laws 1996, operative January 1, 1997).

“This new exemption is set forth in Section 6363.3 of the Revenue, and Taxation Code. In short, this code section states that thrift stores operated by a nonprofit organization, as defined, are exempt from state and local sales and use taxes, until January 1, 2002, if it sells used pieces of clothing, household items, or other retail items if the purpose of that thrift store is to obtain funding for medical and social services provided to individuals with a chronic, life-threatening illness.”

You ask whether the sales by the [X] thrift stores are exempt from sales and use tax under Revenue and Taxation Code section 6363.3.

As you may know, retail sales of tangible personal property in California are subject to sales tax, measured by the gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) A sale at retail means a sale for any purpose other than

resale in the regular course of business. (Rev. & Tax. Code § 6007.) The term “sale” generally means any transfer of title or possession of tangible personal property for a consideration. (Rev. & Tax. Code § 6006(a).) Although the retailer owes the sales tax, the retailer may collect sales tax reimbursement from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1.)

California does not provide a blanket exemption from tax for the sale of tangible personal property by a nonprofit organization. (See Bus. Taxes Law Guide Annots. 390.0020 (8/24/64), 390.0040 (2/20/63).) This means that a retail sale of tangible personal property by a nonprofit organization is subject to tax, unless the sale is specifically exempt from taxation by statute. Revenue and Taxation Code section 6363.3 provides an exemption for sales by thrift stores operated by a nonprofit organization if the purpose of that thrift store is to obtain revenue for the funding of medical and social services to chronically ill individuals, and at least 75 percent of those net revenues are actually expended for the purpose of providing medical and social services to the chronically ill. A “nonprofit organization” for purposes of Revenue and Taxation Code section 6363.3 means:

“[A]n organization that provides medical and social services to individuals with a chronic, life-threatening illness, as defined in subdivision (c) of section 1568.01 of the Health and Safety Code, and is exempt from taxation under Section 23701d.”

In this regard, subdivision (c) of Health and Safety Code section 1568.01 provides:

“‘Chronic, life-threatening illness’ means HIV disease or AIDS.”

Thus, in order to qualify for the exemption set forth in Revenue and Taxation Code section 6363.3, the nonprofit organization must be one that provides medical and social services to individuals with HIV disease or AIDS.

Initially, we note that the 1996 Report of the [X] states that, “The [X] is the nationwide voluntary health organization dedicated to eliminating cancer as a major health problem by preventing cancer, saving lives from cancer and diminishing suffering from cancer through research, education, advocacy and service.”

Revenue and Taxation Code section 6363.3 is a tax exemption statute. The courts have consistently held that administrative agencies and the courts must strictly construe the exemptions to the end that they will not be enlarged nor extended beyond the plain meaning of the language employed. (McConville v. State Bd. of Equalization (1978) 85 Cal.App.3d 156, 159.) While the [X] provides services to the public and to individuals with cancer, which is certainly a life-threatening illness, the [X]’s principal purpose is not to provide medical and social services to individuals with HIV disease or AIDS, the “chronic, life-threatening illness” specifically defined at subdivision (c) of section 1568.01 of the Health and Safety Code.

[A]

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Based on the foregoing, we believe that the [X] does not fall within the definition of the specific "nonprofit organization" provided for in Revenue and Taxation Code section 6363.3. As such, the retail sales of the thrift stores are not exempt from tax under Revenue and Taxation Code section 6363.3.

Please write again if you have other questions.

Sincerely,

Charlotte Chyr
Tax Counsel

CC/cmm