



STATE BOARD OF EQUALIZATION
916-445-5550

October 24, 1988

[A]

Re: [X]

Dear [A]:

This is in response to your letter dated September 28, 1988. The [X] operate several private schools at which the cost of tuition does not cover the cost of educating the child. One method that you have used to raise funds is that in 1975 you established a second hand shop whose profits go toward financial aid. You have asked that we review your situation and consider this store for a "sales tax permit so that sales tax will not have to be collected and recorded." I assume that what you are asking us for is a certificate of exemption exempting the store from liability for sales tax on its sales.

The only exemption under which you would be entitled to purchase the property sold in your store extax for resale and then make sales exempt from sales tax is provided by Revenue and Taxation Code Section 6375 which states:

"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 qualifying for the exemption provided by Section 214 of the Revenue and Taxation Code known as the 'welfare exemption,' which are engaged in the relief of poverty and distress, and make the sales as a matter of assistance to the purchasers."

It is clear from your brief description of your operations that your store does not qualify for this exemption. Your organization is not engaged in the relief of poverty and distress, and most important, the sales in the store are not made as a matter of assistance to the purchasers. Rather, those sales are for the purpose of raising funds for your schools. (See Reg. 1570.)

The other exemption which is relevant to your operations is provided by Revenue and Taxation Code Section 6370 which states:

“(a) This section applies to each of the following:

(1) Nonprofit parent-teacher associations chartered by the California Congress of Parents, Teachers, and Students, Incorporated, and equivalent organizations performing the same type of service for public or private schools and authorized to operate within the school by the governing authority of the school.

(2) Nonprofit parent cooperative nursery schools.

(3) Nonprofit associations commonly called The Friends of the Library, and equivalent organizations performing auxiliary services to any library district, municipal library, or county library in the state, which are authorized to operate within the library by the governing authority of the library.

“(b) An organization described in subdivision (a) is a consumer of, and shall not be considered a retailer within the provisions of this part with respect to, tangible personal property which it sells, if the profits are used exclusively in furtherance of the purposes of the organization.

“(c) This section shall not be applicable to the state or any of its political subdivisions.”

If the activities of your store come within the provisions of this section, it is regarded as the consumer of property it sells. This means that its sales would not be subject to sales tax, rather sales to it would be the taxable retail sale. Thus, a retailer making sales to the store would owe sales tax on those sales, for which it could collect reimbursement from your store if pursuant to contract. (Civil Code § 1656.1, Rev. & Tax. Code § 6051.) Donations of items to the store would not be subject to sales tax since no sale occurs. (See Rev. & Tax. Code § 6006.) In either case, sales by the store would not be subject to sales tax.

You have not provided us sufficient information for us to ascertain whether the store comes within the provisions of Section 6370. A PTA organization is a nonprofit parent teacher association that functions apart from the operation of the school itself. That is, the PTA is a separate and distinct legal entity from the school. Therefore, the entity operating the store must be a separate and distinct legal entity from the school in order to be classified as a PTA “equivalent organization.”

In case the store is operated by an entity separate from the [X], or for your future reference, we provide the following information. Article II, Section 1 of California State PTA Model Bylaws, which would govern a California PTA, lists the objectives of the PTA as follows:

- “a. To promote the welfare of children and youth in home, school, community and place of worship.
- “b. To raise the standards of home life.
- “c. To secure adequate laws for the care and protection of children and youth.
- “d. To bring into closer relation the home and the school, that parents and teachers may cooperate intelligently in the education of children and youth.
- “e. To develop between educators and the general public such united efforts as will secure for all children and youth the highest advantages in physical, mental, social and spiritual education.”

Article II, Section 2 of the Bylaws indicates that the objectives will be promoted by the following:

“The Objects of this association are promoted in cooperation with the National PTA and the California State PTA through a educational program directed toward parents, teachers and the general public; are developed through conferences, committees, projects and programs; and are governed and qualified by the basic policies set forth in Article III.”

Article III provides that the basic policies of the PTA are:

- “a. The association shall be noncommercial, nonsectarian and nonpartisan.
- “b. The name of the association or the names of any members in their official capacities shall not be used in any connection with a commercial concern or with any partisan interest or for any purpose not appropriately related to promotion of the Objects of the organization.
- “c. The association shall not--directly or indirectly--participate or intervene (in any way, including the publishing or distributing of statements) in any political campaign on behalf of, or in opposition to, any candidate for public office; or devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise.
- “d. The association shall work with the schools to provide quality education for all children and youth and shall seek to participate in the decision making process establishing school policy, recognizing that the legal responsibility to make decisions has been delegated by the people to boards of education.

- “e. The association shall not enter into membership with other organizations but may cooperate with other organizations and agencies concerned with child welfare, but a PTA/PTSA representative shall make no commitments that bind the group he represents.
- “f. In the event of dissolution of the association, its assets shall be distributed for one or more of the exempt purposes specified in section 501(c)(3) of the Internal Revenue Code of 1954 as from time to time amended.”

We note that we are unsure whether the account number listed above is for the shop about which you inquire or just for sales of books at your high school. Unless the shop about which you inquire is operated by a PTA or equivalent organization, it must be covered by a seller's permit.

In our view, it is not necessary that an organization have identical objectives and provide all the services outlined above in order to be “equivalent” to the PTA. However, at the very least, it should be a nonprofit organization which includes parents and whose objectives include some coordinated promotion of education programs or projects among parents, students, school authorities, and the general public. If you presently have, or if you organize, an organization that runs the shop that you believe is “equivalent” to a PTA organization and you wish our opinion, feel free to write us again. If you do so, please include the Bylaws of that organization.

Sincerely,

David H. Levine
Tax Counsel

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