



STATE BOARD OF EQUALIZATION

June 29, 1990

Sales of Memberships – discounts on meals and hotel service

Dear

In your February 26, 1990 letter to the Board's legal staff, you enclosed your agreement with --- dated February 22, 1990, for the sale of --- club memberships. You request our opinion on the application of sales and use tax to this agreement. Specifically, you want to know whether tax applies to these memberships, and if so, whether the entire charge or only a percentage of the charge is taxable. If tax applies, you also want to know who is responsible for collecting and paying the tax.

In summary, your agreement with --- calls for --- to promote and market --- memberships. The agreement does not specify the charge for the memberships. I assume the charge is greater than a nominal amount (\$30 or less per year). I also assume that the hotel's total revenue from the sales of the memberships is an insignificant percentage of the hotel's total revenue from all sources.

The person who purchases the membership receives a membership card good for certain discounts. Section 1 of your agreement specifies that --- will promote and market the following --- restaurant and hotel services: hotel dining facilities in two restaurants, -- - including breakfast, lunch, brunch, and dinner; banquet vouchers; and liquor lounge discounts of 35% of the total beverage check. The membership also entitles the member to: quest room voucher valid for a 50% discount; complimentary sleeping room vouchers for a free night, and complimentary use of the tennis courts, swimming pools, parking lots, and airport shuttles.

Section 8 of the agreement specifies that the hotel will receive 50% of the net profit from the membership fees generated under the agreement as consideration for the hotel's participation in the marketing program. Section 9 of the agreement specifies that the term "gross receipt" means all membership fees generated by the program less amounts paid for applicable state or local sales tax.

You also enclosed a letter from a Senior Tax Auditor, Evaluation and Planning Unit, State Board of Equalization, to --- Senior Vice President, --- dated March 8, 1988. The audit staff's letter addressed the same issues as their letter regarding membership fees in the --- which were at that time marketed by ---. Under the same type of program, the customer obtained a membership card which entitled that person to discounts on food, banquets, catering and hotel rooms, and also free use of tennis courts, health spas, and parking lots. The audit staff concluded that the members were acquiring an intangible right to use the facilities of the hotel as they may see fit during the membership period,

and no sales or use tax applied to the charges made for the membership card, even though one of the benefits was discounts on meals. The audit staff also noted that, on the other hand, if the primary benefit of the membership was for members to obtain discounts on food purchases, then the membership fees would be considered to be closely related to anticipated retail sales and any amounts paid by --- to the hotel would be part of the hotel's gross receipts from its sales of meals.

Opinion

The Board's legal staff has issued an opinion (business Taxes Law Guide Annotation 295.1540, 10/3/86) which states:

“295.1540 Membership Fees. Membership fees related to anticipated retail sales are includable in the gross receipts of the seller when a person who pays the fee is entitled to purchase merchandise for a lower price than a person who does not pay the fee, or when the fee exceeds a nominal amount (more than \$30 per year).

“A nominal membership fee (\$30 or less per year) which does not entitle a person who pays the fee to purchase merchandise for a lower price than others is to be regarded as a charge for processing the membership application or membership renewal and is not includable in the gross receipts of the seller...”

When a sale is subject to sales tax, the measure of the tax is the gross receipts received by the retailer as consideration for the sale. There is no deduction allowed for the cost of the property sold, or the cost of labor or services, or any other expense, except as specifically excluded by statute (Rev. & Tax. Code § 6012).

Our opinion is that your sales of --- memberships through --- are not sufficiently closely related to anticipated retail sales of tangible personal property, therefore, no tax applies to your charges for these memberships. Although it is true that the memberships entitle the members to discounts on meals, banquets, and liquor, all sales which are subject to tax, nevertheless the primary benefit of the memberships appears to be the right to receive discounts on nontaxable hotel services and other services such as use of the parking lot, tennis courts, and swimming pool. In this situation, we regard the sale of the memberships as the sale of an intangible right to receive these benefits, and not as part of the taxable gross receipts of the hotel's taxable sales. Thus, we agree with the conclusions reached in the audit staff's March 8, 1988 letter to ---.

Sincerely,

John Abbott
Senior Tax Counsel