



STATE BOARD OF EQUALIZATION

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January 18, 1996

Dear

This is in response to your letter dated November 3, 1995 regarding the application of tax to your organization's fundraising activities. You state:

"The --- Educational Foundation is a non-profit organization [soliciting] funds to aid the --- schools. We were required to obtain a temporary resale license # --- in order to participate in the --- Fall Festival. The main purpose of the booth was to advertise the existence of the foundation and solicit donations.

"We purchased some pencils we planned on giving out on a random basis.

"We paid sales tax on the purchase. No dollar condition was set for giving out the pencils. Are these pencils subject to greater sales tax than the purchase price and if so how much?

"We may in the future give gifts of items based on a certain level of donation, i.e. t-shirts for \$50.00 donation, etc. The value of the gift will have some relationship to the donation.

"Are any of the above gifts subject to sales tax and if so, what is the formula for calculating the sales tax."

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) A retailer may collect reimbursement from its customers for its sales tax liability if its contracts of sale provide for such reimbursement. (Civ. Code § 1656.1.)

Although many nonprofit organizations have tax exempt status for federal and state income tax purposes, California law does not provide a general, blanket exemption

from tax for sales and use tax purposes. This means that a retail sale of tangible personal property to or by such an organization will be subject to tax measured by the full selling price unless specifically exempt from taxation by statute. (Business taxes Law Guide Annotation 390.0020 (8/24/64).)

With respect to the pencils you purchased and planned on "giving out on a random basis," we assume you mean you planned to give the pencils away without charge. You are the consumer of the pencils you purchased and gave away at no charge. Assuming the pencil sales took place inside of California, the vendor who sold you the pencils is the retailer and owes sales tax on those sales, measured by the gross receipts from the sales of the pencils (the sales price of the pencils). The vendor was entitled to reimbursement for its sales tax liability from you if the contracts of sale so provided, and indeed, you indicate that you paid sales tax reimbursement when you purchased the pencils.¹ Your transfers of the pencils without charge are not subject to tax; therefore, you may not charge an amount designated as tax or tax reimbursement on such transfers. (See Reg. 1700(b)(1).)

You state that you are considering giving gifts in the future in exchange for suggested minimum donations that would vary according to the value of each gift. Items furnished for a suggested minimum donation are regarded as having been sold for sales and use tax purposes. (BTLG Ann 495.0370 (10/16/72).) Thus, when you furnish items for a suggested minimum donation, you are the retailer rather than the consumer of such items, and you therefore owe sales tax measured by the sales price of those items.

We have previously determined that where an item is furnished in exchange for a suggested minimum donation, the sales price is the amount identified as being the suggested minimum donation. You may collect reimbursement from your customers for your sales tax liability if your contracts of sale so provide.

If you have further questions, please feel free to write again.

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:cl

cc: District Administrator

¹ If you purchased the pencils outside of California and then used them in this state, such as by giving them away as you have described, sales tax would not apply; instead, you would owe use tax on your use of the pencils, measured by the sales price of the pencils. (Rev. & Tax. Code §§ 6201, 6401; Reg. 1620.)